

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
**CHARGE AGAINST EMPLOYER**

DO NOT WRITE IN THIS SPACE	
Case <b>31-CA-273063</b>	Date Filed <b>2/19/2021</b>

**INSTRUCTIONS:**

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

**1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT**

a. Name of Employer Walt Disney Pictures, Twentieth Century Fox Film Corp., and Relentless Productions, LLC		b. Tel. No.
		c. Cell No. (818) 397-2962
		f. Fax No.
d. Address (Street, city, state, and ZIP code) 500 S Buena Vista Street Burbank, CA 91521-7470	e. Employer Representative Seth Stevelman	g. e-mail Seth.A.Stevelman@disney.com
		h. Number of workers employed 500

i. Type of Establishment (factory, mine, wholesaler, etc.) Motion Picture Producer	j. Identify principal product or service Motion Picture Programs and Series Made for Distribution on the Internet
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The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) **5** of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

**2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)**  
8(a)(5) – Within the previous six months, the Employer failed and refused to bargain in good faith with the Union as the collective bargaining representative of its employees by failing to furnish information requested by the Union.

Date Requested: 08/27/2020

Employer Representative: Seth Stevelman

List Items Requested: Domestic Subscriber Numbers for Disney+ and Hulu

Date Refused: 2/12/2021

**3. Full name of party filing charge (if labor organization, give full name, including local name and number)**  
Joshua Wiser, Senior Contracts Counsel, Writers Guild of America West

4a. Address (Street and number, city, state, and ZIP code) 7000 W. 3rd Street Los Angeles, CA 90048-4321	4b. Tel. No. (323) 782-4501
	4c. Cell No.
	4d. Fax No.
	4e. e-mail jwiser@wga.org

**5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)**

**6. DECLARATION**

I declare that I have read the above charge and that the statements  
are true to the best of my knowledge and belief.

/s/ Joshua Wiser

Joshua Wiser, Senior Contracts Counsel

(signature of representative or person making charge)

(Print/type name and title or office, if any)

Tel. No.  
(323) 782-4501

Office, if any, Cell No.

Fax No.

e-mail  
jwiser@wga.orgAddress 7000 W. 3rd Street, Los Angeles, CA 90048-4321Date 2/19/2021**WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)  
PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information may cause the NLRB to decline to invoke its processes.



# WRITERS GUILD OF AMERICA WEST

CONTRACTS DEPARTMENT

PH 323.782.4501 FAX 323.782.4707

March 9, 2021

## VIA NLRB E-FILE

Marissa Dagdagan  
Field Attorney  
National Labor Relations Board - Region 31  
11500 W. Olympic Blvd., Suite 600  
Los Angeles, CA 90064  
[marissa.dagdagan@nlrb.gov](mailto:marissa.dagdagan@nlrb.gov)

### **Re: WGAW Offer of Proof for NLRB Case No. 31-CA-273063**

Dear Ms. Dagdagan:

Thank you for taking the opportunity to speak with me concerning the charges ("Charges") filed by Writers Guild of America, West, Inc. ("Guild," "WGAW," or "Charging Party") against the employers Walt Disney Pictures, Twentieth Century Fox Film Corp., and Relentless Productions, LLC (collectively "Disney" or "Charged Parties") in Case 31-CA-273063. In response to your request, please consider this letter and its attached exhibits to be the Guild's preliminary offer of proof. Please let me know if you need any additional information.

## **I. The Relevant Parties and the MBA**

### **A. The Guild**

The Guild is a labor union representing approximately 10,000 professional writers who write content for television shows, movies, news programs, documentaries, animation, and digital media. It is the exclusive collective bargaining representative for writers employed by the production companies that are signatory to an industrywide collective bargaining agreement negotiated by the Guild and the Alliance of Motion Picture and Television Producers, Inc. ("AMPTP").<sup>1</sup> The AMPTP serves as the collective bargaining representative of the major studios and production companies, while the WGA serves as the exclusive representative for all of the writers employed under the agreement.

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<sup>1</sup> The Guild acts as exclusive bargaining representative jointly with its sister union, Writers Guild of America, East, Inc. ("WGAE"). We refer to the two unions jointly as "WGA."

## **B. The Charged Parties**

The Charged Parties are signatories to the Writers Guild Theatrical and Television Basic Agreement ("MBA"), the industrywide agreement pursuant to which they employ writers represented by the Guild. They are each an employer in interstate commerce engaged in the production of content for television, digital media and theatrical motion pictures. Each has an obligation to bargain pursuant to Section 8(a)(5) and 8(d) of the National Labor Relations Act (the "Act"), 29 U.S.C. § 151 et seq.

## **C. The MBA**

Approximately 2,000 television and film production companies are parties to the MBA. A true and correct copy of the 2017 MBA is attached as Exhibit "1," and a true and correct copy of the Memorandum of Agreement for the 2020 WGA Theatrical and Television Basic Agreement ("MOA") is attached as Exhibit "2." The MBA establishes minimum terms for the work performed by writers for the MBA-signatory employers, including the minimum compensation that writers must be paid for such work.

The Sideletter on Literary Material Written for Programs Made for New Media ("Sideletter"), included within the MBA, sets forth the terms for high budget derivative and original dramatic new media productions ("HBSVOD Programs") made for a subscription consumer pay ("SVOD") platform. (See pp. 618-53 of the Sideletter, attached.) As discussed more extensively in Section II.A. below, the number of subscribers to an SVOD platform dictates minimum wages and residual compensation for ongoing exhibition of a covered program that is due to the credited writer of made for SVOD programs. Subscriber information is critical for purposes of bargaining and determining the applicability and scope of certain MBA provisions. Writers' wages, residual compensation and other conditions of employment are mandatory subjects of bargaining. See, e.g., NLRA §§ 8(a)(5), 8(a)(1), 8(d), and 9(a). The Charged Parties have a statutory obligation to provide subscriber information which is relevant to contract negotiations or administration of a collective bargaining agreement, like the MBA. See, e.g., *NLRB v. ACME Indus. Co.*, 385 U.S. 432, 435-36 (1967).

## **II. Subscriber Information Related to Disney+ and Hulu**

In accordance with sections 8(a)(5) and 8(d) of the Act, the WGAW served an information request on the Charged Parties seeking information about subscriber numbers. The Charged Parties are employers that are signatory to the MBA and, among other things, produce content initially exhibited on the Disney+ and Hulu SVOD platforms, which are part of the same corporate entity.

### **A. Subscribers to SVOD Platforms**

Pursuant to Paragraph 4.c. of the Sideletter, SVOD platforms with 20 million or more domestic subscribers must pay writers certain minimum rates for script services (consisting of teleplays, rewrites and polishes, for example), depending on the length of the program and its budget. Writers who write for programs with higher budgets are afforded higher rates of pay. Additionally, residuals are paid at five different rates based on an SVOD platform's number of subscribers. Without knowing the subscribers for a particular SVOD platform, there is no way for the Guild to know whether a writer is being paid properly under the MBA.

In accordance with sections 8(a)(5) and 8(d) of the Act, on August 27, 2020, the WGA served an information request (the "Subscriber Information Requests") on Disney (among other signatories to the MBA), seeking:

- The number of paid domestic (U.S. and Canada) subscribers to the Disney+ consumer pay service ("Disney+") and Hulu consumer pay service ("Hulu") as of July 1, 2020;
- The number of domestic (U.S. and Canada) subscribers with access to Disney+ and Hulu during a "free trial period" of more than 30 days;
- The number of domestic (U.S. and Canada) subscribers with access to Disney+ and Hulu during a "free trial period" of 30 days or less; and
- The number of paid domestic (U.S. and Canada) subscribers to Disney+ and Hulu acquired through a partnership with a third-party, if any.

True and correct copies of the Subscriber Information Requests are attached as Exhibits "A" through "D."

### **B. The Sideletter's Subscriber Factor**

Paragraph 4.e. of the Sideletter at pp. 639-46 of the MBA sets forth that the number of domestic subscribers to an SVOD platform dictates the minimum compensation and the residuals formula for subsequent use on domestic and foreign SVOD platforms as a multiple of various factors, including the "Subscriber Factor" set forth in subparagraph 4.e.(c) at p. 641.<sup>2</sup>

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<sup>2</sup> The 2014 MBA subscriber threshold for determining initial compensation pursuant to Paragraph 4.c.(1) and (2) of the Sideletter was 15 million subscribers.



The Subscriber Factor is as follows:

<b>Subscriber Tier</b>	<b>Domestic Subscribers</b>	<b>Subscriber Factor</b>
1	Under 1 million	20%
2	1 million to 5 million	40.0%
3	Over 5 million but fewer than 20 million	65.0%
4	20 million to 45 million	100.0%
5	Over 45 million	150.0%

Paragraph 4.h. of the MOA at pp. 64-65 also states: "The number of domestic subscribers shall be determined as of July 1st of each year of the Agreement ... ."

When Disney became signatory to the MBA, it assumed contractual obligations to provide certain information, including, but not limited to, subscriber numbers. See, e.g., Sideletter Paragraph 4.c.(1)-(2), 4.e.(c), MBA Article 53, and National Labor Relations Act §§ 8(a)(5), 8(d).

### **C. The Guild's Information Requests to the Charged Parties for Subscribers to Disney+ and Hulu, and Disney's Response**

On September 23, 2020 Disney responded by email that Hulu was not signatory, and had no legal obligation to respond to our information request. Over the phone, the Guild explained that for a prior request Relentless Productions, LLC directed to the Guild to seek subscriber information from (b) (6), (b) (7)(C). A true and correct copy of those emails are attached as Exhibits "E" and "F."

On October 1, 2020 Disney responded telephonically to the Subscriber Information Requests and explained it believed the information was confidential, that the Guild was not entitled to the exact number of subscribers, and that telling the Guild the subscriber tier was sufficient. A true and correct copy of the emails exchanged to arrange a telephonic meeting is attached as Exhibit "G." In contrast, the two other signatory companies that received virtually identical information requests seeking subscriber information supplied the Guild with the requested information. CBS Television Studios provided the requested information, including specific subscriber numbers, for CBS All Access, and Spectrum Originals Development provided the requested information, including specific subscriber numbers, for Spectrum Originals.

On December 15, 2020, the Guild sent a second Subscriber Information Request regarding Disney+ and Hulu. A true and correct copy of the notice served on Disney is attached as Exhibits "H" through "J." A true and correct copy of Disney's email acknowledging receipt of the information requests is attached as Exhibit "K."

In January and February 2021, the Guild conferred with Disney by phone and email to discuss its refusal to provide the requested subscriber information. In denying the Guild's information request, Disney declared the number of subscribers is highly confidential. Disney proposed engaging a third-party accounting firm to independently confirm the subscriber *tiers* at issue, but not the *number of subscribers*. In these discussions, the Guild explained its need for the requested information, that Disney was our only source of receiving the requested information, and provided assurances regarding confidentiality. The Guild further explained Disney's offer to provide access to subscriber numbers for Disney+ and Hulu to a third-party accounting firm is unacceptable as it continues to deprive the Guild of the specific information that is relevant and necessary to the Guild's enforcement and bargaining duties, and Disney's ability to share this information with a third party demonstrates that it can share it confidentially with the Guild, which has been the practice for Hulu for several years. True and correct copies of the parties' meet and confer correspondence are attached as Exhibits "L" through "U." To date, Disney has not provided the requested subscriber information. The Guild filed these Charges on February 19, 2021. A true and correct copy of the notice served on Disney is attached as Exhibits "V" and "W."

#### **D. The Guild is Entitled to Subscriber Information**

Disney+ and Hulu subscriber information is "necessary and relevant " to the Guild's representation duties. *ACME Indus. Co.*, 385 U.S. at 436. There are two aspects to that representation: enforcing an existing agreement and engaging in collective bargaining negotiations. *Id.* Disney has a statutory obligation to provide information which is relevant to contract negotiations or the administration of a collective bargaining agreement, like the MBA. See, e.g., *ACME Indus. Co.*, 385 U.S. at 435-36.

The Guild is entitled to Disney+ and Hulu subscriber information, as Disney is contractually bound by the MBA to pay minimum compensation (both with respect to initial compensation, script fees and residuals) based on subscriber numbers. See, e.g., the Sideletter Paragraph 4.e.(c) and 4.c.(1)-(2). Without the number of subscribers, the Guild cannot determine whether the subscriber tier is correct, which information is required for us to carry out our essential enforcement duties. The Guild has a right to basic information such as subscriber totals to confirm that writers are properly compensated. The MBA

provides a specific definition of subscriber that can only be confirmed by the Company providing the appropriate subscriber numbers. Thus, the Guild requires this specific information for enforcement purposes so that it may verify the accuracy of compensation and residuals paid to the credited writers of programs made for these SVOD platforms.

Subscriber information is not only vital to the enforcement of the terms of the MBA, it is fundamental to the Guild's ability to bargain in good faith over the terms and conditions of the next MBA with the AMPTP. *See, e.g., NLRB v. Truitt Mfg. Co.*, 351 U.S. 149, 152-53 (1956). Information about bargaining unit employees' terms and conditions of employment is presumptively relevant. *See, e.g., Bos. Herald-Traveler Corp.*, 110 NLRB 2097 (1954), *enfd.* 223 F.2d 58 (1st Cir. 1955) (holding "[i]t is enough ... that the information relate to the wages or fringe benefits of the employees. [Writers' pay, wages, and other conditions of employment are mandatory subjects of bargaining. *See, e.g.,* NLRA §§ 8(a)(5), 8(a)(1), 8(d), and 9(a).] Such information is obviously related to the bargaining process, and the union is therefore entitled to ask and receive it"); *Timken Roller Bearing Co.*, 138 NLRB 15 (1962), *enfd.* 325 F.2d 746, 750 (6th Cir. 1963), *cert. denied* 376 U.S. 971 (1964); *Pfizer, Inc.*, 268 NLRB 916, 918 (1984), *enfd.* 763 F.2d 887 (7th Cir. 1985).

The subscriber-tier levels are subject to negotiations every three years and the Guild must have access to specific subscriber numbers in order to understand subscriber trends. Subscriber tiers range in size from one million to twenty-five million subscribers, making the actual subscriber number relevant to the Guild's ability to bargain over tiers. It is necessary that the Guild understand the specific subscriber totals for each SVOD service so it can adequately prepare for negotiations where either party may propose changes to the subscriber tiers. In fact, changes to the tier ranges were negotiated as part of the 2014 and 2017 MBAs.

Further, an "employer has a duty to supply [to the union] relevant requested information which may not be in its possession, but where the information likely can be obtained from a third party with whom the employer has a business relationship." *In Re Int'l Protective Servs., Inc.*, 339 NLRB 701, 705 (2003); *see also W. Penn Power Co. v. NLRB*, 394 F.3d 233, 245 (4th Cir. 2005) (holding an employer must "mak[e] reasonable efforts to obtain [information]" from a third-party). Disney has argued that it does not possess the requested information, that the information is possessed by Disney+ and Hulu, related-party entities owned and controlled by the same parent corporation that owns and controls Disney. Disney is required to use reasonable efforts to obtain the requested subscriber information, which it should be able to do with little effort since all the entities are owned and controlled by the same parent corporation. Most recently, Disney proposed that a third party be provided access to the

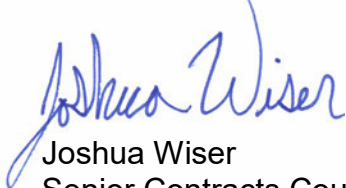
subscriber information to confirm the tiers, suggesting that the information is accessible and available to be shared confidentially with the Guild.

Finally, Disney's confidentiality concerns have been addressed insofar as the Guild has offered to sign a standard confidentiality agreement. In fact, we have offered to sign substantially the same confidentiality agreement we signed with Hulu in 2018. The Guild has maintained the confidentiality of Hulu subscriber numbers for several years. Other signatories to the MBA who have raised concerns about confidentiality have accepted these terms. In our routine course of business, the Guild is charged with maintaining many highly sensitive and confidential records, including confidentially reviewing scripts prior to the release of multi-million-dollar film projects, budget information, licensing agreements, gross receipts, specific subscriber numbers for other SVOD platforms, and the specific subscriber numbers from prior information requests. There has never been an issue with the Guild's ability to keep sensitive information confidential.

### **III. Conclusion**

For the foregoing reasons, General Counsel should forthwith issue complaints against each of the Charged Parties alleging a violation of section 8(a)(1) and (5) of the Act, as described above.

Very truly yours,



Joshua Wiser  
Senior Contracts Counsel

Enclosures

# Exhibit A

## Joshua Wiser

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**From:** Joshua Wiser  
**Sent:** Thursday, August 27, 2020 4:09 PM  
**To:** (b) (6), (b) (7)(C)@disney.com  
**Subject:** Information Request Regarding Subscriber Totals // Disney+  
**Attachments:** WGA Info Request for Subscribers as of July 1, 2020 - Disney.pdf

Dear (b) (6), (b) (7)(C)

The following information request is served on Twentieth Century Fox Film Corp., and Walt Disney Pictures pursuant to the statutory right of the Writers Guild of America to information under sections 8(a)(5) and 8(d) of the National Labor Relations Act (29 U.S.C. § 151 et seq.) and the 2014, 2017, and 2020 Writers Guild of America Theatrical and Television Basic Agreements (collectively, "MBA").

Please provide the Guild, via U.S. mail and email to [jwiser@wga.org](mailto:jwiser@wga.org), with the following information no later than the close of business on September 30, 2020:

- The number of paid domestic (U.S. and Canada) subscribers to the Disney+ consumer pay service ("Disney+") as of July 1, 2020;
- The number of domestic (U.S. and Canada) subscribers with access to Disney+ during a "free trial period" of more than 30 days;
- The number of domestic (U.S. and Canada) subscribers with access to Disney+ during a "free trial period" of 30 days or less; and
- The number of paid domestic (U.S. and Canada) subscribers to Disney+ acquired through a partnership with a third-party, if any.

Please do not hesitate to contact me if you have any questions. The Guild is willing, of course, to discuss appropriate confidentiality measures.

Cordially,

Joshua Wiser

JOSHUA WISER | SENIOR CONTRACTS COUNSEL | WRITERS GUILD OF AMERICA WEST | 7000 W. 3RD ST., LOS ANGELES, CA 90048 | (323) 782-4501



# **Exhibit B**





# WRITERS GUILD OF AMERICA WEST

CONTRACTS DEPARTMENT

PH 323.782.4501 FAX 323.782.4707

August 27, 2020

VIA EMAIL & U.S. MAIL

(b) (6), (b) (7)(C)

The Walt Disney Company

500 S Buena Vista St.

Burbank, CA 91521

(b) (6), (b) (7)(C) @disney.com

## RE: Information Request Regarding Subscriber Totals

Dear (b) (6), (b) (7)(C) :

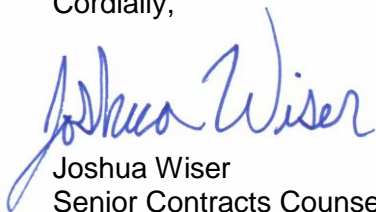
The following information request is served on Twentieth Century Fox Film Corp., and Walt Disney Pictures pursuant to the statutory right of the Writers Guild of America to information under sections 8(a)(5) and 8(d) of the National Labor Relations Act (29 U.S.C. § 151 et seq.) and the 2014, 2017, and 2020 Writers Guild of America Theatrical and Television Basic Agreements (collectively, "MBA").

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- The number of domestic (U.S. and Canada) subscribers with access to Disney+ during a "free trial period" of 30 days or less; and
- The number of paid domestic (U.S. and Canada) subscribers to Disney+ acquired through a partnership with a third-party, if any.

Please do not hesitate to contact me if you have any questions. The Guild is willing, of course, to discuss appropriate confidentiality measures.

Cordially,



Joshua Wisner  
Senior Contracts Counsel

7000 WEST THIRD STREET, LOS ANGELES, CA 90048 PH 323. 951. 4000 FAX 323. 782. 4800 [www.wga.org](http://www.wga.org)

AFFILIATED WITH: WRITERS GUILD OF AMERICA EAST LA GUILDE DES SCÉNARISTES FRANÇAISE NEW ZEALAND WRITERS GUILD SCREENWRITERS ASSOCIATION INDIA  
SCRIPTWRITERS GUILD OF ISRAEL SOCIÉTÉ DES AUTEURS DE RADIO, TÉLÉVISION ET CINÉMA VERBAND DEUTSCHER DREHBUCHAUTOREN WRITERS GUILD OF CANADA  
WRITERS' GUILD OF GREAT BRITAIN WRITERS GUILD OF IRELAND WRITERS' GUILD OF SOUTH AFRICA

# **Exhibit C**

## Joshua Wiser

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**From:** Joshua Wiser  
**Sent:** Thursday, August 27, 2020 4:09 PM  
**To:** (b) (6), (b) (7)(C) @hulu.com  
**Subject:** Information Request Regarding Subscriber Totals // Hulu  
**Attachments:** WGA Info Request for Subscribers as of July 1, 2020 - Relentless Productions.pdf

Dear (b) (6), (b) (7)(C)

The following information request is served on Relentless Productions pursuant to the statutory right of the Writers Guild of America to information under sections 8(a)(5) and 8(d) of the National Labor Relations Act (29 U.S.C. § 151 et seq.) and the 2014, 2017, and 2020 Writers Guild of America Theatrical and Television Basic Agreements (collectively, "MBA").

Please provide the Guild, via U.S. mail and email to [jwiser@wga.org](mailto:jwiser@wga.org), with the following information no later than the close of business on September 30, 2020:

- The number of paid domestic (U.S. and Canada) subscribers to the Hulu consumer pay service ("Hulu") as of July 1, 2020;
- The number of domestic (U.S. and Canada) subscribers with access to Hulu during a "free trial period" of more than 30 days;
- The number of domestic (U.S. and Canada) subscribers with access to Hulu during a "free trial period" of 30 days or less; and
- The number of paid domestic (U.S. and Canada) subscribers to Hulu acquired through a partnership with a third-party, if any.

Please do not hesitate to contact me if you have any questions. The Guild is willing, of course, to discuss appropriate confidentiality measures.

Cordially,

Joshua Wiser

JOSHUA WISER | SENIOR CONTRACTS COUNSEL | WRITERS GUILD OF AMERICA WEST | 7000 W. 3RD ST., LOS ANGELES, CA 90048 | (323) 782-4501



# Exhibit D



# WRITERS GUILD OF AMERICA WEST

CONTRACTS DEPARTMENT

PH 323.782.4501 FAX 323.782.4707

August 27, 2020

VIA EMAIL & U.S. MAIL

(b) (6), (b) (7)(C)

Relentless Productions  
2500 Broadway, 2nd Fl  
Santa Monica, CA 90404  
(b) (6), (b) (7)(C)@hulu.com

## RE: Information Request Regarding Subscriber Totals

Dear (b) (6), (b) (7)(C)

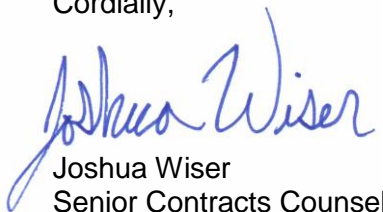
The following information request is served on Relentless Productions pursuant to the statutory right of the Writers Guild of America to information under sections 8(a)(5) and 8(d) of the National Labor Relations Act (29 U.S.C. § 151 et seq.) and the 2014, 2017, and 2020 Writers Guild of America Theatrical and Television Basic Agreements (collectively, "MBA").

Please provide the Guild, via U.S. mail and email to [jwiser@wga.org](mailto:jwiser@wga.org), with the following information no later than the close of business on September 30, 2020:

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- The number of paid domestic (U.S. and Canada) subscribers to Hulu acquired through a partnership with a third-party, if any.

Please do not hesitate to contact me if you have any questions. The Guild is willing, of course, to discuss appropriate confidentiality measures.

Cordially,



Joshua Wiser  
Senior Contracts Counsel

7000 WEST THIRD STREET, LOS ANGELES, CA 90048 PH 323. 951. 4000 FAX 323. 782. 4800 [www.wga.org](http://www.wga.org)

AFFILIATED WITH: WRITERS GUILD OF AMERICA EAST LA GUILDE DES SCÉNARISTES FRANÇAISE NEW ZEALAND WRITERS GUILD SCREENWRITERS ASSOCIATION INDIA  
SCRIPTWRITERS GUILD OF ISRAEL SOCIÉTÉ DES AUTEURS DE RADIO, TÉLÉVISION ET CINÉMA VERBAND DEUTSCHER DREHBUCHAUTOREN WRITERS GUILD OF CANADA  
WRITERS' GUILD OF GREAT BRITAIN WRITERS GUILD OF IRELAND WRITERS' GUILD OF SOUTH AFRICA

# **Exhibit E**

## Joshua Wiser

---

**From:** Stevelman, Seth A. <Seth.A.Stevelman@abc.com>  
**Sent:** Wednesday, September 23, 2020 11:34 AM  
**To:** Joshua Wiser  
**Subject:** Re: Information Request Regarding Subscriber Totals // Hulu

Hi Joshua,

Your below Information Request was referred to me. As you know, Hulu is not signatory to any WGA Agreement and thus has no legal obligation to respond to this information request under the NLRA.

I am looking further into the request below and will get back to you shortly – on or before your September 30, 2020 date. Nothing contained herein is intended as, nor shall it constitute a waiver of any of our rights and positions, all of which are hereby expressly reserved.

In the meantime, my contact information is below if you want to discuss further.

Regards,

Seth

-----  
Seth A. Stevelman  
Vice President & Counsel, Labor Relations  
C: 818-397-2962  
[Seth.A.Stevelman@disney.com](mailto:Seth.A.Stevelman@disney.com)

This e-mail is confidential, intended only for the named recipient(s) above and may contain information that is privileged, attorney work product or exempt from disclosure under applicable law. If you have received this message in error, or are not the named recipient(s), please immediately notify the sender at (818) 460-6751 and delete this e-mail message from your computer. Thank you.

---

**From:** Joshua Wiser <[JWiser@wga.org](mailto:JWiser@wga.org)>  
**Sent:** Thursday, August 27, 2020 4:09 PM  
**To:** (b) (6), (b) (7)(C) <[@hulu.com](mailto:(b) (6), (b) (7)(C)@hulu.com)>  
**Subject:** Information Request Regarding Subscriber Totals // Hulu

Dear (b) (6), (b) (7)(C):

The following information request is served on Relentless Productions pursuant to the statutory right of the Writers Guild of America to information under sections 8(a)(5) and 8(d) of the National Labor Relations Act (29 U.S.C. § 151 et seq.) and the 2014, 2017, and 2020 Writers Guild of America Theatrical and Television Basic Agreements (collectively, "MBA").

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- The number of domestic (U.S. and Canada) subscribers with access to Hulu during a "free trial period" of 30 days or less; and
- The number of paid domestic (U.S. and Canada) subscribers to Hulu acquired through a partnership with a third-party, if any.

Please do not hesitate to contact me if you have any questions. The Guild is willing, of course, to discuss appropriate confidentiality measures.

Cordially,

Joshua Wiser

JOSHUA WISER | SENIOR CONTRACTS COUNSEL | WRITERS GUILD OF AMERICA WEST | 7000 W. 3RD ST., LOS ANGELES, CA 90048 | (323) 782-4501



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# **Exhibit F**

## Joshua Wiser

---

**From:** (b) (6), (b) (7)(C) @hulu.com>  
**Sent:** Tuesday, December 3, 2019 4:37 PM  
**To:** Lalo Vasquez  
**Cc:** Melissa Arbiter  
**Subject:** RE: Hulu response to WGA information request

Hi Lalo, nice to meet you via email. Do you have a few min to chat about this tomorrow? If so, what times are you available?



(b) (6), (b) (7)(C)

---

**From:** Lalo Vasquez <LVasquez@wga.org>  
**Sent:** Tuesday, December 3, 2019 4:32 PM  
**To:** (b) (6), (b) (7)(C) @hulu.com>  
**Cc:** Melissa Arbiter <marbiter@wga.org>  
**Subject:** RE: Hulu response to WGA information request

Thanks, (b) (6), (b) (7)(C) for your quick response and the info about (b) (6), (b) (7)(C)! Moved you to bcc.

(b) (6), (b) (7)(C) – looking forward to working with you on this. Thanks.

Lalo

---

**From:** (b) (6), (b) (7)(C) @hulu.com>  
**Sent:** Tuesday, December 3, 2019 2:59 PM  
**To:** Lalo Vasquez <LVasquez@wga.org>  
**Cc:** Melissa Arbiter <marbiter@wga.org>; (b) (6), (b) (7)(C) @hulu.com>  
**Subject:** RE: Hulu response to WGA information request

Hi Lalo – I'm now on the business affairs side, so looping in my colleague (b) (6), (b) (7)(C) to help you out now that (b) (6), (b) (7)(C) is no longer at Hulu.

Thank you!

(b) (6), (b) (7)(C)

---

**From:** Lalo Vasquez <LVasquez@wga.org>  
**Sent:** Tuesday, December 3, 2019 2:57 PM  
**To:** (b) (6), (b) (7)(C) @hulu.com>  
**Cc:** Melissa Arbiter <marbiter@wga.org>  
**Subject:** FW: Hulu response to WGA information request

Hello (b) (6), (b) (7)(C)

I hope you are well. I am reaching out in hopes you can help us get a follow-up question answered regarding Hulu's response to the WGA's subscriber RFI. After (b) (6), (b) (7)(C) provided the requested info, we had one follow-up clarification question:

**Is Hulu's partner definition the same as it was in 2018? In 2018 it was a more explicit than "no subscriber fee".**

Any chance you can help us get this question answered? Many thanks.

Lalo

Lalo Vasquez  
Contracts Information Specialist  
Writers Guild of America West  
323.782.4501  
[lvasquez@wga.org](mailto:lvasquez@wga.org)

**From:** Lalo Vasquez  
**Sent:** Wednesday, November 20, 2019 2:37 PM  
**To:** (b) (6), (b) (7)(C) @hulu.com>  
**Cc:** Melissa Arbiter <[marbiter@wga.org](mailto:marbiter@wga.org)>  
**Subject:** RE: Hulu response to WGA information request

Hi (b) (6), (b) (7)(C),

I just tried to phone you with my colleague, Melissa Arbiter (copied here), in hopes to discuss my below follow-up question about subscribers. Last year, Melissa received the definition in question from (b) (6), (b) (7)(C). Are you available by telephone today or tomorrow to chat with us about this? Thanks for your time.

Lalo

**From:** Lalo Vasquez  
**Sent:** Monday, November 18, 2019 1:33 PM  
**To:** (b) (6), (b) (7)(C) @hulu.com>  
**Subject:** RE: Hulu response to WGA information request

Hi (b) (6), (b) (7)(C),

I am following up on my below email. Any chance you can let me know soon? Thank you.

Lalo

**From:** Lalo Vasquez  
**Sent:** Monday, November 4, 2019 10:55 AM  
**To:** (b) (6), (b) (7)(C) @hulu.com>  
**Subject:** RE: Hulu response to WGA information request

Hello (b) (6), (b) (7)(C),

Hope all is well with you.

I have one follow-up question regarding subscribers:

Is Hulu's partner definition the same as it was in 2018? In 2018 it was a more explicit than "no subscriber fee". Please advise. Thanks.

Lalo

Lalo Vasquez  
Contracts Information Specialist  
Writers Guild of America West  
323.782.4501  
[lvasquez@wga.org](mailto:lvasquez@wga.org)

**From:** (b) (6), (b) (7)(C) [[mailto:\(b\) \(6\), \(b\) \(7\)\(C\)@hulu.com](mailto:(b) (6), (b) (7)(C)@hulu.com)]  
**Sent:** Thursday, August 22, 2019 10:39 AM  
**To:** Lalo Vasquez  
**Subject:** RE: Hulu response to WGA information request

Great, thanks!

**From:** Lalo Vasquez <[Lvasquez@wga.org](mailto:Lvasquez@wga.org)>  
**Sent:** Wednesday, August 21, 2019 9:20 PM  
**To:** (b) (6), (b) (7)(C) <[mailto:\(b\) \(6\), \(b\) \(7\)\(C\)@hulu.com](mailto:(b) (6), (b) (7)(C)@hulu.com)>  
**Subject:** RE: Hulu response to WGA information request

Hi (b) (6), (b) (7)(C)

I am acknowledging receipt. Thank you for sending.

We will review and reach out if we have any questions.

Best,

Lalo

Lalo Vasquez  
Contracts Information Specialist  
Writers Guild of America West  
323.782.4501  
[lvasquez@wga.org](mailto:lvasquez@wga.org)

**From:** (b) (6), (b) (7)(C) [[mailto:\(b\) \(6\), \(b\) \(7\)\(C\)@hulu.com](mailto:(b) (6), (b) (7)(C)@hulu.com)]  
**Sent:** Tuesday, August 20, 2019 2:55 PM  
**To:** Lalo Vasquez  
**Subject:** Hulu response to WGA information request

Please find attached Hulu's correspondence in response to your letter request dated August 7, 2019. A copy is also being sent by US mail.

Please do not hesitate to reach out if you have any questions.

Thank you.

(b) (6), (b) (7)(C)

Business & Legal Affairs, Originals

**hulu**

2500 Broadway, 2d Floor

Santa Monica, CA 90404

(424) 299-8498

(b) (6), (b) (7)(C) [@hulu.com](mailto:(b) (6), (b) (7)(C)@hulu.com)

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# **Exhibit G**



## Joshua Wiser

---

**From:** Stevelman, Seth A. <Seth.A.Stevelman@abc.com>  
**Sent:** Thursday, October 1, 2020 3:09 PM  
**To:** Joshua Wiser  
**Cc:** Stubington, Mark  
**Subject:** RE: Information Request Regarding Subscriber Totals // Disney+

That's my number. I can then loop in Mark when you call. Thx.

---

**From:** Joshua Wiser [mailto:[JWiser@wga.org](mailto:JWiser@wga.org)]  
**Sent:** Thursday, October 1, 2020 1:23 PM  
**To:** Stevelman, Seth A. <Seth.A.Stevelman@abc.com>  
**Cc:** Stubington, Mark <Mark.Stubington@disney.com>  
**Subject:** RE: Information Request Regarding Subscriber Totals // Disney+

Perfect. Should I call you at (b) (6), (b) (7)(C)?

---

**From:** Stevelman, Seth A. <[Seth.A.Stevelman@abc.com](mailto:Seth.A.Stevelman@abc.com)>  
**Sent:** Wednesday, September 30, 2020 5:36 PM  
**To:** Joshua Wiser <[JWiser@wga.org](mailto:JWiser@wga.org)>  
**Cc:** Stubington, Mark <[Mark.Stubington@disney.com](mailto:Mark.Stubington@disney.com)>  
**Subject:** RE: Information Request Regarding Subscriber Totals // Disney+

Hi Josh,

Sorry – this afternoon didn't work. Does 4pm tomorrow work for you?

---

**From:** Joshua Wiser [mailto:[JWiser@wga.org](mailto:JWiser@wga.org)]  
**Sent:** Wednesday, September 30, 2020 4:06 PM  
**To:** Stevelman, Seth A. <[Seth.A.Stevelman@abc.com](mailto:Seth.A.Stevelman@abc.com)>  
**Cc:** Stubington, Mark <[Mark.Stubington@disney.com](mailto:Mark.Stubington@disney.com)>  
**Subject:** RE: Information Request Regarding Subscriber Totals // Disney+

Great to hear from you, Seth. Happy to give you a call. I have some flexibility in my schedule now through the end of the day. I am also available tomorrow after 2pm. What time works for you?

---

**From:** Stevelman, Seth A. <[Seth.A.Stevelman@abc.com](mailto:Seth.A.Stevelman@abc.com)>  
**Sent:** Wednesday, September 30, 2020 2:44 PM  
**To:** Joshua Wiser <[JWiser@wga.org](mailto:JWiser@wga.org)>  
**Cc:** Stubington, Mark <[Mark.Stubington@disney.com](mailto:Mark.Stubington@disney.com)>  
**Subject:** RE: Information Request Regarding Subscriber Totals // Disney+

Hi Joshua,

We just left you a message (on WGA's answering service) to discuss your information request on Disney+. Do you want to schedule a time to discuss?

Thank you.

Seth and Mark

---

Seth A. Stevelman  
Vice President & Counsel, Labor Relations  
C: 818-397-2962  
[Seth.A.Stevelman@disney.com](mailto:Seth.A.Stevelman@disney.com)

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# **Exhibit H**

## Joshua Wiser

---

**From:** Joshua Wiser  
**Sent:** Tuesday, December 15, 2020 4:47 PM  
**To:** Stevelman, Seth A.  
**Cc:** Stubington, Mark  
**Subject:** Demand for Domestic Subscribers as of July 1, 2020 for Disney+ and Hulu  
**Attachments:** WGA Info Request for Subscribers as of July 1, 2020 - Disney.pdf; WGA Info Request for Subscribers as of July 1, 2020 - Relentless Productions.pdf

Dear Mr. Stevelman:

On August 27, 2020, the Guild sent the attached information requests asking for the number of domestic subscribers for Hulu and Disney+ as of July 1, 2020. To date, the Company has failed to provide this information and has only offered that both services are within the tier of 20 million to 45 million subscribers, without substantiation.

The Guild is entitled to information that is "necessary and relevant" to its representation duties. (*NLRB v. ACME Industrial Co.*, 385 U.S. 432, 436 (1967)). The information is necessary to enforce the collective bargaining agreement as the number of subscribers to a streaming platform determines both initial compensation and residuals for high-budget original SVOD programs.

Without the requested information, the Guild cannot pursue an enforcement action against a particular company that is not in compliance with the MBA. Moreover, because the subscriber information impacts wages (both initial compensation and residuals), it is a mandatory subject of bargaining and is presumptively relevant to the Guild. Such information is necessary for the Guild to adequately prepare for and engage in collective bargaining with the companies.

For several years, Hulu, through its signatory entity Relentless Productions, LLC, has, like many other companies, provided the Guild with the requested subscriber information. The Guild has maintained the confidentiality of this information and remains willing to enter into a reasonable confidentiality agreement regarding the 2020 subscriber information.

If the Company is unwilling to provide the requested information by January 8, 2021, the Guild will pursue its legal remedies.

This email does not constitute a full recitation of the facts or positions of the Guild. Nothing contained herein is intended as an admission of any fact or a waiver of any right, remedy or position of the Guild or of any individual writer, each and all of which are hereby expressly reserved.

Cordially,

Josh Wiser

# **Exhibit I**



# WRITERS GUILD OF AMERICA WEST

CONTRACTS DEPARTMENT

PH 323.782.4501 FAX 323.782.4707

August 27, 2020

VIA EMAIL & U.S. MAIL

(b) (6), (b) (7)(C)

The Walt Disney Company  
500 S Buena Vista St.  
Burbank, CA 91521

(b) (6), (b) (7)(C) @disney.com

## RE: Information Request Regarding Subscriber Totals

Dear (b) (6), (b) (7)(C)

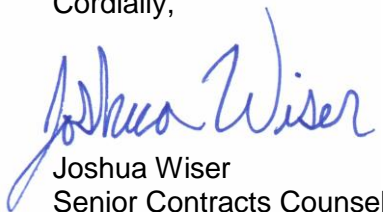
The following information request is served on Twentieth Century Fox Film Corp., and Walt Disney Pictures pursuant to the statutory right of the Writers Guild of America to information under sections 8(a)(5) and 8(d) of the National Labor Relations Act (29 U.S.C. § 151 et seq.) and the 2014, 2017, and 2020 Writers Guild of America Theatrical and Television Basic Agreements (collectively, "MBA").

Please provide the Guild, via U.S. mail and email to [jwiser@wga.org](mailto:jwiser@wga.org), with the following information no later than the close of business on September 30, 2020:

- The number of paid domestic (U.S. and Canada) subscribers to the Disney+ consumer pay service ("Disney+") as of July 1, 2020;
- The number of domestic (U.S. and Canada) subscribers with access to Disney+ during a "free trial period" of more than 30 days;
- The number of domestic (U.S. and Canada) subscribers with access to Disney+ during a "free trial period" of 30 days or less; and
- The number of paid domestic (U.S. and Canada) subscribers to Disney+ acquired through a partnership with a third-party, if any.

Please do not hesitate to contact me if you have any questions. The Guild is willing, of course, to discuss appropriate confidentiality measures.

Cordially,



Joshua Wisner  
Senior Contracts Counsel

7000 WEST THIRD STREET, LOS ANGELES, CA 90048 PH 323. 951. 4000 FAX 323. 782. 4800 [www.wga.org](http://www.wga.org)

AFFILIATED WITH: WRITERS GUILD OF AMERICA EAST LA GUILDE DES SCÉNARISTES FRANÇAISE NEW ZEALAND WRITERS GUILD SCREENWRITERS ASSOCIATION INDIA  
SCRIPTWRITERS GUILD OF ISRAEL SOCIÉTÉ DES AUTEURS DE RADIO, TÉLÉVISION ET CINÉMA VERBAND DEUTSCHER DREHBUCHAUTOREN WRITERS GUILD OF CANADA  
WRITERS' GUILD OF GREAT BRITAIN WRITERS GUILD OF IRELAND WRITERS' GUILD OF SOUTH AFRICA

# **Exhibit J**





# WRITERS GUILD OF AMERICA WEST

CONTRACTS DEPARTMENT

PH 323.782.4501 FAX 323.782.4707

August 27, 2020

VIA EMAIL & U.S. MAIL

(b) (6), (b) (7)(C)

Relentless Productions  
2500 Broadway, 2nd Fl  
Santa Monica, CA 90404  
(b) (6), (b) (7)(C)@hulu.com

## RE: Information Request Regarding Subscriber Totals

Dear (b) (6), (b) (7)(C):

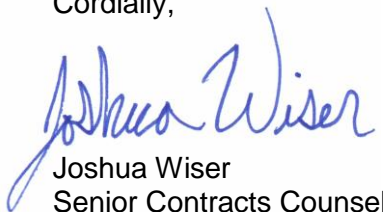
The following information request is served on Relentless Productions pursuant to the statutory right of the Writers Guild of America to information under sections 8(a)(5) and 8(d) of the National Labor Relations Act (29 U.S.C. § 151 et seq.) and the 2014, 2017, and 2020 Writers Guild of America Theatrical and Television Basic Agreements (collectively, "MBA").

Please provide the Guild, via U.S. mail and email to [jwiser@wga.org](mailto:jwiser@wga.org), with the following information no later than the close of business on September 30, 2020:

- The number of paid domestic (U.S. and Canada) subscribers to the Hulu consumer pay service ("Hulu") as of July 1, 2020;
- The number of domestic (U.S. and Canada) subscribers with access to Hulu during a "free trial period" of more than 30 days;
- The number of domestic (U.S. and Canada) subscribers with access to Hulu during a "free trial period" of 30 days or less; and
- The number of paid domestic (U.S. and Canada) subscribers to Hulu acquired through a partnership with a third-party, if any.

Please do not hesitate to contact me if you have any questions. The Guild is willing, of course, to discuss appropriate confidentiality measures.

Cordially,



Joshua Wiser  
Senior Contracts Counsel

7000 WEST THIRD STREET, LOS ANGELES, CA 90048 PH 323. 951. 4000 FAX 323. 782. 4800 [www.wga.org](http://www.wga.org)

AFFILIATED WITH: WRITERS GUILD OF AMERICA EAST LA GUILDE DES SCÉNARISTES FRANÇAISE NEW ZEALAND WRITERS GUILD SCREENWRITERS ASSOCIATION INDIA  
SCRIPTWRITERS GUILD OF ISRAEL SOCIÉTÉ DES AUTEURS DE RADIO, TÉLÉVISION ET CINÉMA VERBAND DEUTSCHER DREHBUCHAUTOREN WRITERS GUILD OF CANADA  
WRITERS' GUILD OF GREAT BRITAIN WRITERS GUILD OF IRELAND WRITERS' GUILD OF SOUTH AFRICA

# **Exhibit K**

## Joshua Wiser

---

**From:** Stevelman, Seth A. <Seth.A.Stevelman@abc.com>  
**Sent:** Tuesday, December 15, 2020 8:43 PM  
**To:** Joshua Wiser  
**Cc:** Stubington, Mark  
**Subject:** RE: Demand for Domestic Subscribers as of July 1, 2020 for Disney+ and Hulu

Hi Josh,

Thanks for the note and the call. Mark and I will call you to discuss. Thanks.

Seth

---

**From:** Joshua Wiser [mailto:JWiser@wga.org]  
**Sent:** Tuesday, December 15, 2020 4:47 PM  
**To:** Stevelman, Seth A. <Seth.A.Stevelman@abc.com>  
**Cc:** Stubington, Mark <Mark.Stubington@disney.com>  
**Subject:** Demand for Domestic Subscribers as of July 1, 2020 for Disney+ and Hulu

Dear Mr. Stevelman:

On August 27, 2020, the Guild sent the attached information requests asking for the number of domestic subscribers for Hulu and Disney+ as of July 1, 2020. To date, the Company has failed to provide this information and has only offered that both services are within the tier of 20 million to 45 million subscribers, without substantiation.

The Guild is entitled to information that is "necessary and relevant" to its representation duties. (*NLRB v. ACME Industrial Co.*, 385 U.S. 432, 436 (1967)). The information is necessary to enforce the collective bargaining agreement as the number of subscribers to a streaming platform determines both initial compensation and residuals for high-budget original SVOD programs.

Without the requested information, the Guild cannot pursue an enforcement action against a particular company that is not in compliance with the MBA. Moreover, because the subscriber information impacts wages (both initial compensation and residuals), it is a mandatory subject of bargaining and is presumptively relevant to the Guild. Such information is necessary for the Guild to adequately prepare for and engage in collective bargaining with the companies.

For several years, Hulu, through its signatory entity Relentless Productions, LLC, has, like many other companies, provided the Guild with the requested subscriber information. The Guild has maintained the confidentiality of this information and remains willing to enter into a reasonable confidentiality agreement regarding the 2020 subscriber information.

If the Company is unwilling to provide the requested information by January 8, 2021, the Guild will pursue its legal remedies.

This email does not constitute a full recitation of the facts or positions of the Guild. Nothing contained herein is intended as an admission of any fact or a waiver of any right, remedy or position of the Guild or of any individual writer, each and all of which are hereby expressly reserved.

Cordially,

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# **Exhibit L**

## Joshua Wiser

---

**From:** Joshua Wiser  
**Sent:** Thursday, January 7, 2021 5:02 PM  
**To:** Stevelman, Seth A.  
**Cc:** Stubington, Mark  
**Subject:** RE: Demand for Domestic Subscribers as of July 1, 2020 for Disney+ and Hulu

Hi Seth and Mark,

Hope you enjoyed a happy holiday break. The deadline for this is tomorrow. Just wanted to provide you with a reminder.

Cordially,

Josh

---

**From:** Stevelman, Seth A. <Seth.A.Stevelman@abc.com>  
**Sent:** Tuesday, December 15, 2020 8:43 PM  
**To:** Joshua Wiser <JWiser@wga.org>  
**Cc:** Stubington, Mark <Mark.Stubington@disney.com>  
**Subject:** RE: Demand for Domestic Subscribers as of July 1, 2020 for Disney+ and Hulu

Hi Josh,

Thanks for the note and the call. Mark and I will call you to discuss. Thanks.

Seth

---

**From:** Joshua Wiser [<mailto:JWiser@wga.org>]  
**Sent:** Tuesday, December 15, 2020 4:47 PM  
**To:** Stevelman, Seth A. <[Seth.A.Stevelman@abc.com](mailto:Seth.A.Stevelman@abc.com)>  
**Cc:** Stubington, Mark <[Mark.Stubington@disney.com](mailto:Mark.Stubington@disney.com)>  
**Subject:** Demand for Domestic Subscribers as of July 1, 2020 for Disney+ and Hulu

Dear Mr. Stevelman:

On August 27, 2020, the Guild sent the attached information requests asking for the number of domestic subscribers for Hulu and Disney+ as of July 1, 2020. To date, the Company has failed to provide this information and has only offered that both services are within the tier of 20 million to 45 million subscribers, without substantiation.

The Guild is entitled to information that is "necessary and relevant" to its representation duties. (*NLRB v. ACME Industrial Co.*, 385 U.S. 432, 436 (1967)). The information is necessary to enforce the collective bargaining agreement as the number of subscribers to a streaming platform determines both initial compensation and residuals for high-budget original SVOD programs.

Without the requested information, the Guild cannot pursue an enforcement action against a particular company that is not in compliance with the MBA. Moreover, because the subscriber information impacts wages (both initial compensation and residuals), it is a mandatory subject of bargaining and is presumptively relevant

to the Guild. Such information is necessary for the Guild to adequately prepare for and engage in collective bargaining with the companies.

For several years, Hulu, through its signatory entity Relentless Productions, LLC, has, like many other companies, provided the Guild with the requested subscriber information. The Guild has maintained the confidentiality of this information and remains willing to enter into a reasonable confidentiality agreement regarding the 2020 subscriber information.

If the Company is unwilling to provide the requested information by January 8, 2021, the Guild will pursue its legal remedies.

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Cordially,

Josh Wiser

JOSHUA WISER | SENIOR CONTRACTS COUNSEL | WRITERS GUILD OF AMERICA WEST | 7000 W. 3RD ST., LOS ANGELES, CA 90048 | (323) 782-4501 | [WGA](#)

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# **Exhibit M**



## Joshua Wiser

---

**From:** Stevelman, Seth A. <Seth.A.Stevelman@abc.com>  
**Sent:** Thursday, January 7, 2021 7:20 PM  
**To:** Joshua Wiser  
**Cc:** Stubington, Mark  
**Subject:** RE: Demand for Domestic Subscribers as of July 1, 2020 for Disney+ and Hulu

Hi Josh,

Thanks for the email and for checking in. Sorry we didn't get a chance to touch base before the holidays.

We would like to request a modest extension of time to respond to the request – for 2 weeks to January 22, 2021 – given we just had the holiday break where many of our executives were off for a few weeks and this has been the first week back and it has been a little crazy with COVID and other matters.

In the interim, we can also have a further conversation to discuss.

We appreciate the consideration. Thank you.

Seth and Mark

---

**From:** Joshua Wiser [mailto:JWiser@wga.org]  
**Sent:** Thursday, January 7, 2021 5:02 PM  
**To:** Stevelman, Seth A. <Seth.A.Stevelman@abc.com>  
**Cc:** Stubington, Mark <Mark.Stubington@disney.com>  
**Subject:** RE: Demand for Domestic Subscribers as of July 1, 2020 for Disney+ and Hulu

Hi Seth and Mark,

Hope you enjoyed a happy holiday break. The deadline for this is tomorrow. Just wanted to provide you with a reminder.

Cordially,

Josh

---

**From:** Stevelman, Seth A. <Seth.A.Stevelman@abc.com>  
**Sent:** Tuesday, December 15, 2020 8:43 PM  
**To:** Joshua Wiser <JWiser@wga.org>  
**Cc:** Stubington, Mark <Mark.Stubington@disney.com>  
**Subject:** RE: Demand for Domestic Subscribers as of July 1, 2020 for Disney+ and Hulu

Hi Josh,

Thanks for the note and the call. Mark and I will call you to discuss. Thanks.

Seth

---

**From:** Joshua Wiser [<mailto:JWiser@wga.org>]  
**Sent:** Tuesday, December 15, 2020 4:47 PM  
**To:** Stevelman, Seth A. <[Seth.A.Stevelman@abc.com](mailto:Seth.A.Stevelman@abc.com)>  
**Cc:** Stubington, Mark <[Mark.Stubington@disney.com](mailto:Mark.Stubington@disney.com)>  
**Subject:** Demand for Domestic Subscribers as of July 1, 2020 for Disney+ and Hulu

Dear Mr. Stevelman:

On August 27, 2020, the Guild sent the attached information requests asking for the number of domestic subscribers for Hulu and Disney+ as of July 1, 2020. To date, the Company has failed to provide this information and has only offered that both services are within the tier of 20 million to 45 million subscribers, without substantiation.

The Guild is entitled to information that is "necessary and relevant" to its representation duties. (*NLRB v. ACME Industrial Co.*, 385 U.S. 432, 436 (1967)). The information is necessary to enforce the collective bargaining agreement as the number of subscribers to a streaming platform determines both initial compensation and residuals for high-budget original SVOD programs.

Without the requested information, the Guild cannot pursue an enforcement action against a particular company that is not in compliance with the MBA. Moreover, because the subscriber information impacts wages (both initial compensation and residuals), it is a mandatory subject of bargaining and is presumptively relevant to the Guild. Such information is necessary for the Guild to adequately prepare for and engage in collective bargaining with the companies.

For several years, Hulu, through its signatory entity Relentless Productions, LLC, has, like many other companies, provided the Guild with the requested subscriber information. The Guild has maintained the confidentiality of this information and remains willing to enter into a reasonable confidentiality agreement regarding the 2020 subscriber information.

If the Company is unwilling to provide the requested information by January 8, 2021, the Guild will pursue its legal remedies.

This email does not constitute a full recitation of the facts or positions of the Guild. Nothing contained herein is intended as an admission of any fact or a waiver of any right, remedy or position of the Guild or of any individual writer, each and all of which are hereby expressly reserved.

Cordially,

Josh Wiser

---

JOSHUA WISER | SENIOR CONTRACTS COUNSEL | WRITERS GUILD OF AMERICA WEST | 7000 W. 3RD ST., LOS ANGELES, CA 90048 | (323) 782-4501 | [WGA.org](http://WGA.org)

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# **Exhibit N**

## Joshua Wiser

---

**From:** Joshua Wiser  
**Sent:** Friday, January 8, 2021 10:09 AM  
**To:** Stevelman, Seth A.  
**Cc:** Stubington, Mark  
**Subject:** RE: Demand for Domestic Subscribers as of July 1, 2020 for Disney+ and Hulu

Hi Seth and Mark,

We agree to extend the deadline to Friday, January 22, 2021 based on the rational you provided. Happy to talk in the interim too.

Cordially,

Josh

---

**From:** Stevelman, Seth A. <Seth.A.Stevelman@abc.com>  
**Sent:** Thursday, January 7, 2021 7:20 PM  
**To:** Joshua Wiser <JWiser@wga.org>  
**Cc:** Stubington, Mark <Mark.Stubington@disney.com>  
**Subject:** RE: Demand for Domestic Subscribers as of July 1, 2020 for Disney+ and Hulu

Hi Josh,

Thanks for the email and for checking in. Sorry we didn't get a chance to touch base before the holidays.

We would like to request a modest extension of time to respond to the request – for 2 weeks to January 22, 2021 – given we just had the holiday break where many of our executives were off for a few weeks and this has been the first week back and it has been a little crazy with COVID and other matters.

In the interim, we can also have a further conversation to discuss.

We appreciate the consideration. Thank you.

Seth and Mark

---

**From:** Joshua Wiser [<mailto:JWiser@wga.org>]  
**Sent:** Thursday, January 7, 2021 5:02 PM  
**To:** Stevelman, Seth A. <[Seth.A.Stevelman@abc.com](mailto:Seth.A.Stevelman@abc.com)>  
**Cc:** Stubington, Mark <[Mark.Stubington@disney.com](mailto:Mark.Stubington@disney.com)>  
**Subject:** RE: Demand for Domestic Subscribers as of July 1, 2020 for Disney+ and Hulu

Hi Seth and Mark,

Hope you enjoyed a happy holiday break. The deadline for this is tomorrow. Just wanted to provide you with a reminder.

Cordially,

Josh

---

**From:** Stevelman, Seth A. <[Seth.A.Stevelman@abc.com](mailto:Seth.A.Stevelman@abc.com)>  
**Sent:** Tuesday, December 15, 2020 8:43 PM  
**To:** Joshua Wiser <[JWiser@wga.org](mailto:JWiser@wga.org)>  
**Cc:** Stubington, Mark <[Mark.Stubington@disney.com](mailto:Mark.Stubington@disney.com)>  
**Subject:** RE: Demand for Domestic Subscribers as of July 1, 2020 for Disney+ and Hulu

Hi Josh,

Thanks for the note and the call. Mark and I will call you to discuss. Thanks.

Seth

---

**From:** Joshua Wiser [<mailto:JWiser@wga.org>]  
**Sent:** Tuesday, December 15, 2020 4:47 PM  
**To:** Stevelman, Seth A. <[Seth.A.Stevelman@abc.com](mailto:Seth.A.Stevelman@abc.com)>  
**Cc:** Stubington, Mark <[Mark.Stubington@disney.com](mailto:Mark.Stubington@disney.com)>  
**Subject:** Demand for Domestic Subscribers as of July 1, 2020 for Disney+ and Hulu

Dear Mr. Stevelman:

On August 27, 2020, the Guild sent the attached information requests asking for the number of domestic subscribers for Hulu and Disney+ as of July 1, 2020. To date, the Company has failed to provide this information and has only offered that both services are within the tier of 20 million to 45 million subscribers, without substantiation.

The Guild is entitled to information that is "necessary and relevant" to its representation duties. (*NLRB v. ACME Industrial Co.*, 385 U.S. 432, 436 (1967)). The information is necessary to enforce the collective bargaining agreement as the number of subscribers to a streaming platform determines both initial compensation and residuals for high-budget original SVOD programs.

Without the requested information, the Guild cannot pursue an enforcement action against a particular company that is not in compliance with the MBA. Moreover, because the subscriber information impacts wages (both initial compensation and residuals), it is a mandatory subject of bargaining and is presumptively relevant to the Guild. Such information is necessary for the Guild to adequately prepare for and engage in collective bargaining with the companies.

For several years, Hulu, through its signatory entity Relentless Productions, LLC, has, like many other companies, provided the Guild with the requested subscriber information. The Guild has maintained the confidentiality of this information and remains willing to enter into a reasonable confidentiality agreement regarding the 2020 subscriber information.

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Cordially,

Josh Wiser

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# Exhibit O

## Joshua Wiser

---

**From:** Stevelman, Seth A. <Seth.A.Stevelman@abc.com>  
**Sent:** Friday, January 8, 2021 6:26 PM  
**To:** Joshua Wiser  
**Cc:** Stubington, Mark  
**Subject:** RE: Demand for Domestic Subscribers as of July 1, 2020 for Disney+ and Hulu

Thanks. You too.

---

**From:** Joshua Wiser [mailto:[JWiser@wga.org](mailto:JWiser@wga.org)]  
**Sent:** Friday, January 8, 2021 12:14 PM  
**To:** Stevelman, Seth A. <Seth.A.Stevelman@abc.com>  
**Cc:** Stubington, Mark <Mark.Stubington@disney.com>  
**Subject:** RE: Demand for Domestic Subscribers as of July 1, 2020 for Disney+ and Hulu

I totally understand. That works. Thanks! And have a good weekend.

---

**From:** Stevelman, Seth A. <[Seth.A.Stevelman@abc.com](mailto:Seth.A.Stevelman@abc.com)>  
**Sent:** Friday, January 8, 2021 12:10 PM  
**To:** Joshua Wiser <[JWiser@wga.org](mailto:JWiser@wga.org)>  
**Cc:** Stubington, Mark <[Mark.Stubington@disney.com](mailto:Mark.Stubington@disney.com)>  
**Subject:** RE: Demand for Domestic Subscribers as of July 1, 2020 for Disney+ and Hulu

Hi Josh,

Makes sense. Today is pretty hectic for me. I was looking for a time next week. Let me talk to Mark and then we can send you some times and we can set something up that way. Does that work?

Thx again.

---

**From:** Joshua Wiser [mailto:[JWiser@wga.org](mailto:JWiser@wga.org)]  
**Sent:** Friday, January 8, 2021 11:34 AM  
**To:** Stevelman, Seth A. <[Seth.A.Stevelman@abc.com](mailto:Seth.A.Stevelman@abc.com)>  
**Cc:** Stubington, Mark <[Mark.Stubington@disney.com](mailto:Mark.Stubington@disney.com)>  
**Subject:** RE: Demand for Domestic Subscribers as of July 1, 2020 for Disney+ and Hulu

Probably best to set up a time for me to call you or, in the alternative, I can arrange a call-in number. Since we are all still remote, the main line for the Contracts Department just goes to voicemail at the moment. I've got time later today after 3pm and after 4pm on Monday. Do you have availability then?

---

**From:** Stevelman, Seth A. <[Seth.A.Stevelman@abc.com](mailto:Seth.A.Stevelman@abc.com)>  
**Sent:** Friday, January 8, 2021 10:45 AM  
**To:** Joshua Wiser <[JWiser@wga.org](mailto:JWiser@wga.org)>  
**Cc:** Stubington, Mark <[Mark.Stubington@disney.com](mailto:Mark.Stubington@disney.com)>  
**Subject:** RE: Demand for Domestic Subscribers as of July 1, 2020 for Disney+ and Hulu

Thanks Josh.



Is the best number to reach you at 323-782-4501?

Thanks.

---

**From:** Joshua Wiser [<mailto:JWiser@wga.org>]  
**Sent:** Friday, January 8, 2021 10:09 AM  
**To:** Stevelman, Seth A. <[Seth.A.Stevelman@abc.com](mailto:Seth.A.Stevelman@abc.com)>  
**Cc:** Stubington, Mark <[Mark.Stubington@disney.com](mailto:Mark.Stubington@disney.com)>  
**Subject:** RE: Demand for Domestic Subscribers as of July 1, 2020 for Disney+ and Hulu

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Cordially,

Josh

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**Sent:** Thursday, January 7, 2021 7:20 PM  
**To:** Joshua Wiser <[JWiser@wga.org](mailto:JWiser@wga.org)>  
**Cc:** Stubington, Mark <[Mark.Stubington@disney.com](mailto:Mark.Stubington@disney.com)>  
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Seth and Mark

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**Sent:** Thursday, January 7, 2021 5:02 PM  
**To:** Stevelman, Seth A. <[Seth.A.Stevelman@abc.com](mailto:Seth.A.Stevelman@abc.com)>  
**Cc:** Stubington, Mark <[Mark.Stubington@disney.com](mailto:Mark.Stubington@disney.com)>  
**Subject:** RE: Demand for Domestic Subscribers as of July 1, 2020 for Disney+ and Hulu

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Josh

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**From:** Stevelman, Seth A. <[Seth.A.Stevelman@abc.com](mailto:Seth.A.Stevelman@abc.com)>  
**Sent:** Tuesday, December 15, 2020 8:43 PM  
**To:** Joshua Wiser <[JWiser@wga.org](mailto:JWiser@wga.org)>  
**Cc:** Stubington, Mark <[Mark.Stubington@disney.com](mailto:Mark.Stubington@disney.com)>  
**Subject:** RE: Demand for Domestic Subscribers as of July 1, 2020 for Disney+ and Hulu

Hi Josh,

Thanks for the note and the call. Mark and I will call you to discuss. Thanks.

Seth

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**From:** Joshua Wiser [<mailto:JWiser@wga.org>]  
**Sent:** Tuesday, December 15, 2020 4:47 PM  
**To:** Stevelman, Seth A. <[Seth.A.Stevelman@abc.com](mailto:Seth.A.Stevelman@abc.com)>  
**Cc:** Stubington, Mark <[Mark.Stubington@disney.com](mailto:Mark.Stubington@disney.com)>  
**Subject:** Demand for Domestic Subscribers as of July 1, 2020 for Disney+ and Hulu

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Cordially,

Josh Wiser

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# **Exhibit P**

## Joshua Wiser

---

**From:** Stevelman, Seth A. <Seth.A.Stevelman@abc.com>  
**Sent:** Thursday, January 21, 2021 1:19 PM  
**To:** Stubington, Mark; Joshua Wiser  
**Subject:** RE: Demand for Domestic Subscribers as of July 1, 2020 for Disney+ and Hulu

Great. Josh – you want to call Mark and then Mark can loop me in?

---

**From:** Stubington, Mark  
**Sent:** Thursday, January 21, 2021 1:17 PM  
**To:** Joshua Wiser <JWiser@wga.org>  
**Cc:** Stevelman, Seth A. <Seth.A.Stevelman@abc.com>  
**Subject:** Re: Demand for Domestic Subscribers as of July 1, 2020 for Disney+ and Hulu

Either works for me as well. My number is 818-919-9652

On Jan 21, 2021, at 1:16 PM, Joshua Wiser <[JWiser@wga.org](mailto:JWiser@wga.org)> wrote:

Absolutely. I can call now, or I can call at 2:30pm or 3:00pm, etc. What number would you like me to call?

---

**From:** Stevelman, Seth A. <[Seth.A.Stevelman@abc.com](mailto:Seth.A.Stevelman@abc.com)>  
**Sent:** Thursday, January 21, 2021 1:13 PM  
**To:** Joshua Wiser <[JWiser@wga.org](mailto:JWiser@wga.org)>  
**Cc:** Stubington, Mark <[Mark.Stubington@disney.com](mailto:Mark.Stubington@disney.com)>  
**Subject:** RE: Demand for Domestic Subscribers as of July 1, 2020 for Disney+ and Hulu

Can you do it before 1:30pm? This is subject to me reaching out to Mark to make sure he's available. Or we can try for 2:30 or 3pm but if we get dragged back in, we'll let you know.

---

**From:** Joshua Wiser [<mailto:JWiser@wga.org>]  
**Sent:** Thursday, January 21, 2021 1:11 PM  
**To:** Stevelman, Seth A. <[Seth.A.Stevelman@abc.com](mailto:Seth.A.Stevelman@abc.com)>  
**Cc:** Stubington, Mark <[Mark.Stubington@disney.com](mailto:Mark.Stubington@disney.com)>  
**Subject:** RE: Demand for Domestic Subscribers as of July 1, 2020 for Disney+ and Hulu

Great. I am around and will make time for a call. I have a 1:30pm meeting that may go for an hour to 90 minutes, but can duck out of it early, if needed. Other than that, I have some flexibility in my schedule. What time works for you?

---

**From:** Stevelman, Seth A. <[Seth.A.Stevelman@abc.com](mailto:Seth.A.Stevelman@abc.com)>  
**Sent:** Thursday, January 21, 2021 12:47 PM  
**To:** Joshua Wiser <[JWiser@wga.org](mailto:JWiser@wga.org)>  
**Cc:** Stubington, Mark <[Mark.Stubington@disney.com](mailto:Mark.Stubington@disney.com)>  
**Subject:** RE: Demand for Domestic Subscribers as of July 1, 2020 for Disney+ and Hulu

Hi Josh,

We have a window of being on break so let us know your availability this afternoon. Thanks.

---

**From:** Joshua Wiser [<mailto:JWiser@wga.org>]  
**Sent:** Wednesday, January 20, 2021 6:27 PM  
**To:** Stevelman, Seth A. <[Seth.A.Stevelman@abc.com](mailto:Seth.A.Stevelman@abc.com)>  
**Cc:** Stubington, Mark <[Mark.Stubington@disney.com](mailto:Mark.Stubington@disney.com)>  
**Subject:** RE: Demand for Domestic Subscribers as of July 1, 2020 for Disney+ and Hulu

Sounds good. I'll keep an eye out for your email tomorrow. Thanks for letting me know.

---

**From:** Stevelman, Seth A. <[Seth.A.Stevelman@abc.com](mailto:Seth.A.Stevelman@abc.com)>  
**Sent:** Wednesday, January 20, 2021 6:23 PM  
**To:** Joshua Wiser <[JWiser@wga.org](mailto:JWiser@wga.org)>  
**Cc:** Stubington, Mark <[Mark.Stubington@disney.com](mailto:Mark.Stubington@disney.com)>  
**Subject:** RE: Demand for Domestic Subscribers as of July 1, 2020 for Disney+ and Hulu

Hi Josh,

Just on break now. Let's plan on tomorrow afternoon. I will email you when we foresee a break in the action.

Seth

---

**From:** Joshua Wiser [<mailto:JWiser@wga.org>]  
**Sent:** Wednesday, January 20, 2021 5:12 PM  
**To:** Stevelman, Seth A. <[Seth.A.Stevelman@abc.com](mailto:Seth.A.Stevelman@abc.com)>  
**Cc:** Stubington, Mark <[Mark.Stubington@disney.com](mailto:Mark.Stubington@disney.com)>  
**Subject:** RE: Demand for Domestic Subscribers as of July 1, 2020 for Disney+ and Hulu

Yes. I am around. What time works for you? I am free now, and have flexibility tomorrow afternoon too.

---

**From:** Stevelman, Seth A. <[Seth.A.Stevelman@abc.com](mailto:Seth.A.Stevelman@abc.com)>  
**Sent:** Wednesday, January 20, 2021 12:28 PM  
**To:** Joshua Wiser <[JWiser@wga.org](mailto:JWiser@wga.org)>  
**Cc:** Stubington, Mark <[Mark.Stubington@disney.com](mailto:Mark.Stubington@disney.com)>  
**Subject:** RE: Demand for Domestic Subscribers as of July 1, 2020 for Disney+ and Hulu

Hi Josh,

Are you available later today or tomorrow to discuss? Mark and I have been in negotiations so I think later in the afternoon/evening are better for us.

Thanks again.

Seth

---

**From:** Joshua Wiser [<mailto:JWiser@wga.org>]  
**Sent:** Friday, January 8, 2021 10:09 AM  
**To:** Stevelman, Seth A. <[Seth.A.Stevelman@abc.com](mailto:Seth.A.Stevelman@abc.com)>

**Cc:** Stubington, Mark <[Mark.Stubington@disney.com](mailto:Mark.Stubington@disney.com)>

**Subject:** RE: Demand for Domestic Subscribers as of July 1, 2020 for Disney+ and Hulu

Hi Seth and Mark,

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Cordially,

Josh

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**From:** Stevelman, Seth A. <[Seth.A.Stevelman@abc.com](mailto:Seth.A.Stevelman@abc.com)>

**Sent:** Thursday, January 7, 2021 7:20 PM

**To:** Joshua Wiser <[JWiser@wga.org](mailto:JWiser@wga.org)>

**Cc:** Stubington, Mark <[Mark.Stubington@disney.com](mailto:Mark.Stubington@disney.com)>

**Subject:** RE: Demand for Domestic Subscribers as of July 1, 2020 for Disney+ and Hulu

Hi Josh,

Thanks for the email and for checking in. Sorry we didn't get a chance to touch base before the holidays.

We would like to request a modest extension of time to respond to the request – for 2 weeks to January 22, 2021 – given we just had the holiday break where many of our executives were off for a few weeks and this has been the first week back and it has been a little crazy with COVID and other matters.

In the interim, we can also have a further conversation to discuss.

We appreciate the consideration. Thank you.

Seth and Mark

---

**From:** Joshua Wiser [<mailto:JWiser@wga.org>]

**Sent:** Thursday, January 7, 2021 5:02 PM

**To:** Stevelman, Seth A. <[Seth.A.Stevelman@abc.com](mailto:Seth.A.Stevelman@abc.com)>

**Cc:** Stubington, Mark <[Mark.Stubington@disney.com](mailto:Mark.Stubington@disney.com)>

**Subject:** RE: Demand for Domestic Subscribers as of July 1, 2020 for Disney+ and Hulu

Hi Seth and Mark,

Hope you enjoyed a happy holiday break. The deadline for this is tomorrow. Just wanted to provide you with a reminder.

Cordially,

Josh

---

**From:** Stevelman, Seth A. <[Seth.A.Stevelman@abc.com](mailto:Seth.A.Stevelman@abc.com)>

**Sent:** Tuesday, December 15, 2020 8:43 PM

**To:** Joshua Wiser <[JWiser@wga.org](mailto:JWiser@wga.org)>

**Cc:** Stubington, Mark <[Mark.Stubington@disney.com](mailto:Mark.Stubington@disney.com)>

**Subject:** RE: Demand for Domestic Subscribers as of July 1, 2020 for Disney+ and Hulu

Hi Josh,

Thanks for the note and the call. Mark and I will call you to discuss. Thanks.

Seth

---

**From:** Joshua Wiser [<mailto:JWiser@wga.org>]

**Sent:** Tuesday, December 15, 2020 4:47 PM

**To:** Stevelman, Seth A. <[Seth.A.Stevelman@abc.com](mailto:Seth.A.Stevelman@abc.com)>

**Cc:** Stubington, Mark <[Mark.Stubington@disney.com](mailto:Mark.Stubington@disney.com)>

**Subject:** Demand for Domestic Subscribers as of July 1, 2020 for Disney+ and Hulu

Dear Mr. Stevelman:

On August 27, 2020, the Guild sent the attached information requests asking for the number of domestic subscribers for Hulu and Disney+ as of July 1, 2020. To date, the Company has failed to provide this information and has only offered that both services are within the tier of 20 million to 45 million subscribers, without substantiation.

The Guild is entitled to information that is "necessary and relevant" to its representation duties. (*NLRB v. ACME Industrial Co.*, 385 U.S. 432, 436 (1967)). The information is necessary to enforce the collective bargaining agreement as the number of subscribers to a streaming platform determines both initial compensation and residuals for high-budget original SVOD programs.

Without the requested information, the Guild cannot pursue an enforcement action against a particular company that is not in compliance with the MBA. Moreover, because the subscriber information impacts wages (both initial compensation and residuals), it is a mandatory subject of bargaining and is presumptively relevant to the Guild. Such information is necessary for the Guild to adequately prepare for and engage in collective bargaining with the companies.

For several years, Hulu, through its signatory entity Relentless Productions, LLC, has, like many other companies, provided the Guild with the requested subscriber information. The Guild has maintained the confidentiality of this information and remains willing to enter into a reasonable confidentiality agreement regarding the 2020 subscriber information.

If the Company is unwilling to provide the requested information by January 8, 2021, the Guild will pursue its legal remedies.

This email does not constitute a full recitation of the facts or positions of the Guild. Nothing contained herein is intended as an admission of any fact or a waiver of any right, remedy or position of the Guild or of any individual writer, each and all of which are hereby expressly reserved.

Cordially,

Josh Wiser

---

JOSHUA WISER | SENIOR CONTRACTS COUNSEL | WRITERS GUILD OF AMERICA WEST | 7000 W. 3RD ST., LOS ANGELES, CA 90048 | (323) 782-4501 | [WGA.org](http://WGA.org)



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# Exhibit Q

## Joshua Wiser

---

**From:** Stevelman, Seth A. <Seth.A.Stevelman@abc.com>  
**Sent:** Thursday, January 21, 2021 1:42 PM  
**To:** Joshua Wiser  
**Cc:** Stubington, Mark  
**Subject:** RE: Demand for Domestic Subscribers as of July 1, 2020 for Disney+ and Hulu

Dear Mr. Wiser:

This is in response to your email of December 15, 2020 relating to your request for specific subscriber information for both Hulu and Disney+. For your information, these are online platforms that are not themselves employers of bargaining unit employees.

As a foundational matter, we as signatory employers do not possess the specific subscriber information that you are demanding. Rather, that highly sensitive business information is controlled by the online platforms themselves that have not voluntarily provided that information to this company. *Howe K. Sipes Co.*, 319 N.L.R.B. 30, 38 (1995) (“[A]n employer can be expected to supply only that information which it actually possesses or it can reasonably acquire. There is no requirement that, in response to a request for information, an employer conduct independent cost studies or analysis”); *Korn Indus., Inc. v. NLRB*, 389 F.2d 117, 123 (4th Cir.1967) (same).

As you may recall, Mark Stubington and I discussed this matter with you in early October and based on information that the signatory employers possessed at that time, we informed you that the number of domestic subscribers for both Hulu and Disney+ fell within the range of 20 million to 45 million. This information about the subscriber range (which continues to be accurate), rather than any specific number within that range, is the only data that in any way affects the terms and conditions of bargaining unit employees. Specifically, the CBA sets certain wages and benefits to several different ranges of domestic subscribers. The CBA does not set wages and benefits to the specific numbers of subscribers within those ranges and accordingly that specific number is entirely irrelevant to the bargaining relationship between our respective companies, as signatory employers, and the Guild. In fact, during the recent industry negotiations, the WGA accepted this concept from other SVOD platforms, such as Amazon Prime, Peacock, Apple TV+ and HBO Max, that only a subscriber range – and not the specific number of subscribers – was relevant. When we provided you with this information in October, you said you would review it and get back to us with any follow-up – which led to your December 15, 2020 email.

In cases like this one, where the union’s request for information pertains to matters outside of the bargaining unit, the union bears the burden of establishing its relevance. *See Walter N. Yoder & Sons, Inc. v. NLRB*, 754 F.2d 531, 535 (4th Cir.1985); *A.S. Abell, supra*, 624 F.2d at 510. A union must also provide facts that support its assertion of relevance and need. *See Rice Growers Ass’n of California, Inc.*, 312 N.L.R.B. 837, 838 (1993). The union has not established such facts in this matter.

If you have any reason to doubt the veracity of the subscriber ranges for both Hulu and Disney+, we hereby offer to meet and confer with you to discuss reasonable methods to confirm that information, which is highly confidential and proprietary to the online platforms. *Detroit Edison v. N.L.R.B.*, 440 U.S. 301 (1978).

Regards,

Mark and Seth

---

**From:** Joshua Wiser [mailto:JWiser@wga.org]  
**Sent:** Tuesday, December 15, 2020 4:47 PM  
**To:** Stevelman, Seth A. <Seth.A.Stevelman@abc.com>  
**Cc:** Stubington, Mark <Mark.Stubington@disney.com>  
**Subject:** Demand for Domestic Subscribers as of July 1, 2020 for Disney+ and Hulu

Dear Mr. Stevelman:

On August 27, 2020, the Guild sent the attached information requests asking for the number of domestic subscribers for Hulu and Disney+ as of July 1, 2020. To date, the Company has failed to provide this information and has only offered that both services are within the tier of 20 million to 45 million subscribers, without substantiation.

The Guild is entitled to information that is "necessary and relevant" to its representation duties. (*NLRB v. ACME Industrial Co.*, 385 U.S. 432, 436 (1967)). The information is necessary to enforce the collective bargaining agreement as the number of subscribers to a streaming platform determines both initial compensation and residuals for high-budget original SVOD programs.

Without the requested information, the Guild cannot pursue an enforcement action against a particular company that is not in compliance with the MBA. Moreover, because the subscriber information impacts wages (both initial compensation and residuals), it is a mandatory subject of bargaining and is presumptively relevant to the Guild. Such information is necessary for the Guild to adequately prepare for and engage in collective bargaining with the companies.

For several years, Hulu, through its signatory entity Relentless Productions, LLC, has, like many other companies, provided the Guild with the requested subscriber information. The Guild has maintained the confidentiality of this information and remains willing to enter into a reasonable confidentiality agreement regarding the 2020 subscriber information.

If the Company is unwilling to provide the requested information by January 8, 2021, the Guild will pursue its legal remedies.

This email does not constitute a full recitation of the facts or positions of the Guild. Nothing contained herein is intended as an admission of any fact or a waiver of any right, remedy or position of the Guild or of any individual writer, each and all of which are hereby expressly reserved.

Cordially,

Josh Wiser

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# **Exhibit R**

## Joshua Wiser

---

**From:** Joshua Wiser  
**Sent:** Friday, February 5, 2021 8:47 AM  
**To:** Stevelman, Seth A.; Stubington, Mark  
**Cc:** Melissa Arbiter  
**Subject:** RE: Demand for Domestic Subscribers as of July 1, 2020 for Disney+ and Hulu  
**Attachments:** Hulu NDA Revised for Disney+ (02.05.21).docx

Dear Mr. Stevelman:

I'm writing in reference to the Guild's August 27, 2020 information requests in which we asked for the number of domestic subscribers for Hulu and Disney+ as of July 1, 2020. To date, the Company has failed to provide this information and has only offered that both services are within the tier of 20 million to 45 million subscribers, without substantiation.

This specific information is critical to the Guild. Initial compensation and residual compensation for high budget SVOD programs is based on the number of domestic subscribers to the streaming platform in the United States and Canada as of July 1, 2020 under Paragraph 4.e.(2)(c) of the New Media Sideletter of the MBA. Disney claims, but refuses to substantiate, that both Disney+ and Hulu have less than 45 million subscribers. Disney's public financial disclosures indicate Disney+ may have more than 45 million domestic subscribers. The Guild has repeatedly requested this necessary and relevant information to carry out its enforcement and collective bargaining duties.

Specific subscriber information is "necessary and relevant" to the Guild's bargaining duties, both in terms of enforcement and collective bargaining. *NLRB v. ACME Industrial Co.*, 385 U.S. 432, 436 (1967); *see also Press Democrat Pub. Co. v. NLRB*, 629 F.2d 1320, 1324 (9th Cir. 1980) (holding mandatory subjects of bargaining "pertaining to wages, hours or conditions of employment, is presumptively relevant, and must be disclosed unless the employer proves a lack of relevance"). The subscriber-tier levels are subject to negotiations every three years and the Guild must understand actual subscriber trends. Changes to the tier thresholds were negotiated as part of the 2014 and 2017 MBAs. It is necessary that the Guild understand the specific subscriber totals for each SVOD service so it can adequately prepare for negotiations where either party may propose changes to the subscriber tiers.

The specific subscriber numbers are also necessary and relevant for purposes of enforcement. The Guild has a right to basic information such as subscriber totals to confirm that writers are properly compensated. The MBA provides a specific definition of subscriber that can only be confirmed by the Company providing the appropriate subscriber numbers.

As signatory employers, Relentless Productions, Twentieth Century Fox Film Corp., and Walt Disney Pictures have an obligation to take reasonable and necessary steps to obtain information from third parties that is necessary and relevant to the Guild's bargaining duties. *In Re Int'l Protective Servs., Inc.*, 339 NLRB 701, 705 (2003) (holding "an employer has a duty to supply relevant requested information which may not be in its possession, but where the information likely can be obtained from a third party with whom the employer has a business relationship"); *see also W. Penn Power Co. v. NLRB*, 394 F.3d 233, 245 (4th Cir. 2005) (holding an employer has an "affirmative obligation to make reasonable efforts to obtain [from its parent] relevant information ... needed by the Union to police the collective bargaining agreement").

In response to the Guild's prior requests for information regarding monthly subscriber numbers relevant to the 2014 MBA and annual subscriber numbers in 2018 and 2019, Relentless Productions put the Guild in direct contact with Hulu employees who provided the specific number of subscribers, not the mere range that Disney is offering now. Relentless Productions is part of the Disney corporation, which is the majority owner of Hulu and Disney+, and Disney publicly reports subscriber totals to shareholders. Relentless Productions, Twentieth Century Fox Film Corp., and Walt Disney

Pictures have an obligation to obtain subscriber information from within its parent corporation and a practice exists for doing precisely that for Hulu.

The Guild stands ready to meet and confer to address any legitimate confidentially concerns, and has attached the Confidentiality Agreement we've previously entered into with Hulu slightly modified and tracked in redline to include Disney+. However, in the event the Company fails to provide the requested subscriber numbers for Disney+ and Hulu by the close of business on Friday, February 12th, the Guild intends to file a charge.

Cordially,

Josh

JOSHUA WISER | SENIOR CONTRACTS COUNSEL | WRITERS GUILD OF AMERICA WEST | 7000 W. 3RD ST., LOS ANGELES, CA 90048 | (323) 782-4501 | [WGA](#)

**From:** Stevelman, Seth A. <Seth.A.Stevelman@abc.com>

**Sent:** Thursday, January 21, 2021 1:42 PM

**To:** Joshua Wiser <JWiser@wga.org>

**Cc:** Stubington, Mark <Mark.Stubington@disney.com>

**Subject:** RE: Demand for Domestic Subscribers as of July 1, 2020 for Disney+ and Hulu

Dear Mr. Wiser:

This is in response to your email of December 15, 2020 relating to your request for specific subscriber information for both Hulu and Disney+. For your information, these are online platforms that are not themselves employers of bargaining unit employees.

As a foundational matter, we as signatory employers do not possess the specific subscriber information that you are demanding. Rather, that highly sensitive business information is controlled by the online platforms themselves that have not voluntarily provided that information to this company. *Howe K. Sipes Co.*, 319 N.L.R.B. 30, 38 (1995) (“[A]n employer can be expected to supply only that information which it actually possesses or it can reasonably acquire. There is no requirement that, in response to a request for information, an employer conduct independent cost studies or analysis”); *Korn Indus., Inc. v. NLRB*, 389 F.2d 117, 123 (4th Cir.1967) (same).

As you may recall, Mark Stubington and I discussed this matter with you in early October and based on information that the signatory employers possessed at that time, we informed you that the number of domestic subscribers for both Hulu and Disney+ fell within the range of 20 million to 45 million. This information about the subscriber range (which continues to be accurate), rather than any specific number within that range, is the only data that in any way affects the terms and conditions of bargaining unit employees. Specifically, the CBA sets certain wages and benefits to several different ranges of domestic subscribers. The CBA does not set wages and benefits to the specific numbers of subscribers within those ranges and accordingly that specific number is entirely irrelevant to the bargaining relationship between our respective companies, as signatory employers, and the Guild. In fact, during the recent industry negotiations, the WGA accepted this concept from other SVOD platforms, such as Amazon Prime, Peacock, Apple TV+ and HBO Max, that only a subscriber range – and not the specific number of subscribers – was relevant. When we provided you with this information in October, you said you would review it and get back to us with any follow-up – which led to your December 15, 2020 email.

In cases like this one, where the union’s request for information pertains to matters outside of the bargaining unit, the union bears the burden of establishing its relevance. *See Walter N. Yoder & Sons, Inc. v. NLRB*, 754 F.2d 531, 535 (4th Cir.1985); *A.S. Abell, supra*, 624 F.2d at 510. A union must also provide facts that support

its assertion of relevance and need. *See Rice Growers Ass'n of California, Inc.*, 312 N.L.R.B. 837, 838 (1993). The union has not established such facts in this matter.

If you have any reason to doubt the veracity of the subscriber ranges for both Hulu and Disney+, we hereby offer to meet and confer with you to discuss reasonable methods to confirm that information, which is highly confidential and proprietary to the online platforms. *Detroit Edison v. N.L.R.B.*, 440 U.S. 301 (1978).

Regards,

Mark and Seth

---

**From:** Joshua Wiser [<mailto:JWiser@wga.org>]  
**Sent:** Tuesday, December 15, 2020 4:47 PM  
**To:** Stevelman, Seth A. <[Seth.A.Stevelman@abc.com](mailto:Seth.A.Stevelman@abc.com)>  
**Cc:** Stubington, Mark <[Mark.Stubington@disney.com](mailto:Mark.Stubington@disney.com)>  
**Subject:** Demand for Domestic Subscribers as of July 1, 2020 for Disney+ and Hulu

Dear Mr. Stevelman:

On August 27, 2020, the Guild sent the attached information requests asking for the number of domestic subscribers for Hulu and Disney+ as of July 1, 2020. To date, the Company has failed to provide this information and has only offered that both services are within the tier of 20 million to 45 million subscribers, without substantiation.

The Guild is entitled to information that is "necessary and relevant" to its representation duties. (*NLRB v. ACME Industrial Co.*, 385 U.S. 432, 436 (1967)). The information is necessary to enforce the collective bargaining agreement as the number of subscribers to a streaming platform determines both initial compensation and residuals for high-budget original SVOD programs.

Without the requested information, the Guild cannot pursue an enforcement action against a particular company that is not in compliance with the MBA. Moreover, because the subscriber information impacts wages (both initial compensation and residuals), it is a mandatory subject of bargaining and is presumptively relevant to the Guild. Such information is necessary for the Guild to adequately prepare for and engage in collective bargaining with the companies.

For several years, Hulu, through its signatory entity Relentless Productions, LLC, has, like many other companies, provided the Guild with the requested subscriber information. The Guild has maintained the confidentiality of this information and remains willing to enter into a reasonable confidentiality agreement regarding the 2020 subscriber information.

If the Company is unwilling to provide the requested information by January 8, 2021, the Guild will pursue its legal remedies.

This email does not constitute a full recitation of the facts or positions of the Guild. Nothing contained herein is intended as an admission of any fact or a waiver of any right, remedy or position of the Guild or of any individual writer, each and all of which are hereby expressly reserved.

Cordially,

Josh Wiser



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# **Exhibit T**

## Joshua Wiser

---

**From:** Stevelman, Seth A. <Seth.A.Stevelman@abc.com>  
**Sent:** Friday, February 12, 2021 12:54 PM  
**To:** Joshua Wiser; Stubington, Mark  
**Cc:** Melissa Arbiter  
**Subject:** RE: Demand for Domestic Subscribers as of July 1, 2020 for Disney+ and Hulu

Dear Mr. Wiser:

This will supplement our previous communications with you (which include our January 21 and other telephone conversations) and the various written correspondence below regarding the above-referenced matter.

To date, the WGA has failed to provide to the Companies a rationale explaining the purpose for its request to obtain *the exact number of subscribers* for Disney+. As we have discussed with you previously on many occasions, the only data relating to Disney+ subscribers that in any way affects the terms and conditions of bargaining unit employees under the WGA MBA is the subscriber **range** – which we already have provided to you. More pointedly, the rates, terms and conditions (including residuals) of the WGA MBA are determined solely by subscription tiers. The exact subscriber numbers within those tiers are immaterial.

Further, contrary to the WGA's assertion, we have discussed with you a willingness to substantiate the subscriber tier information that we have provided to you. We remind you of our last offer stated in both our January 21 email below and during our conversation with you that if you have any reason to doubt the veracity of our representation, we will meet and confer with you to discuss ways to confirm the information. Despite that offer, the WGA continues to request access to the specific subscriber number, implying that if it receives that number, the WGA somehow will have confirmed the subscriber tier. Yet that argument ignores the simple fact that the companies already have provided to the WGA the exact subscriber tier information that it purports to seek and even if we provide you with a specific number of subscribers, you could still come back and question the veracity of the number.

All of this said and with the desire to more directly address the WGA's desire to confirm the subscriber tier information for Disney+, the Companies propose that the parties engage an independent auditing/accounting firm which will be directed to independently confirm the subscriber tiers at issue. Such an endeavor will provide the WGA with confirmation of the veracity of information that it has been provided in this matter. Please let us know if the WGA is agreeable to this proposal and if not, please let us know why this does not work.

Finally, as it relates to Hulu, since Hulu does not have a foreign presence, the number that is publicly disclosed in the earnings reports is the number of domestic subscribers for Hulu. Note that while Hulu reports that number publicly, such information for such domestic subscribers is not reported publicly for Disney+ (which has a domestic and international presence). Such information is considered by Disney+ to be highly confidential and proprietary.

We look forward to your response.

Regards,

Mark and Seth

---

**From:** Joshua Wiser [mailto:JWiser@wga.org]  
**Sent:** Friday, February 5, 2021 8:47 AM  
**To:** Stevelman, Seth A. <Seth.A.Stevelman@abc.com>; Stubington, Mark <Mark.Stubington@disney.com>  
**Cc:** Melissa Arbiter <marbiter@wga.org>  
**Subject:** RE: Demand for Domestic Subscribers as of July 1, 2020 for Disney+ and Hulu

Dear Mr. Stevelman:

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The specific subscriber numbers are also necessary and relevant for purposes of enforcement. The Guild has a right to basic information such as subscriber totals to confirm that writers are properly compensated. The MBA provides a specific definition of subscriber that can only be confirmed by the Company providing the appropriate subscriber numbers.

As signatory employers, Relentless Productions, Twentieth Century Fox Film Corp., and Walt Disney Pictures have an obligation to take reasonable and necessary steps to obtain information from third parties that is necessary and relevant to the Guild's bargaining duties. *In Re Int'l Protective Servs., Inc.*, 339 NLRB 701, 705 (2003) (holding "an employer has a duty to supply relevant requested information which may not be in its possession, but where the information likely can be obtained from a third party with whom the employer has a business relationship"); *see also W. Penn Power Co. v. NLRB*, 394 F.3d 233, 245 (4th Cir. 2005) (holding an employer has an "affirmative obligation to make reasonable efforts to obtain [from its parent] relevant information ... needed by the Union to police the collective bargaining agreement").

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The Guild stands ready to meet and confer to address any legitimate confidentially concerns, and has attached the Confidentiality Agreement we've previously entered into with Hulu slightly modified and tracked in redline to include Disney+. However, in the event the Company fails to provide the requested subscriber numbers for Disney+ and Hulu by the close of business on Friday, February 12th, the Guild intends to file a charge.

Cordially,

Josh

JOSHUA WISER | SENIOR CONTRACTS COUNSEL | WRITERS GUILD OF AMERICA WEST | 7000 W. 3RD ST., LOS ANGELES, CA 90048 | (323) 782-4501 | [WGA](#)

**From:** Stevelman, Seth A. <[Seth.A.Stevelman@abc.com](mailto:Seth.A.Stevelman@abc.com)>

**Sent:** Thursday, January 21, 2021 1:42 PM

**To:** Joshua Wiser <[JWiser@wga.org](mailto:JWiser@wga.org)>

**Cc:** Stubington, Mark <[Mark.Stubington@disney.com](mailto:Mark.Stubington@disney.com)>

**Subject:** RE: Demand for Domestic Subscribers as of July 1, 2020 for Disney+ and Hulu

Dear Mr. Wiser:

This is in response to your email of December 15, 2020 relating to your request for specific subscriber information for both Hulu and Disney+. For your information, these are online platforms that are not themselves employers of bargaining unit employees.

As a foundational matter, we as signatory employers do not possess the specific subscriber information that you are demanding. Rather, that highly sensitive business information is controlled by the online platforms themselves that have not voluntarily provided that information to this company. *Howe K. Sipes Co.*, 319 N.L.R.B. 30, 38 (1995) (“[A]n employer can be expected to supply only that information which it actually possesses or it can reasonably acquire. There is no requirement that, in response to a request for information, an employer conduct independent cost studies or analysis”); *Korn Indus., Inc. v. NLRB*, 389 F.2d 117, 123 (4th Cir.1967) (same).

As you may recall, Mark Stubington and I discussed this matter with you in early October and based on information that the signatory employers possessed at that time, we informed you that the number of domestic subscribers for both Hulu and Disney+ fell within the range of 20 million to 45 million. This information about the subscriber range (which continues to be accurate), rather than any specific number within that range, is the only data that in any way affects the terms and conditions of bargaining unit employees. Specifically, the CBA sets certain wages and benefits to several different ranges of domestic subscribers. The CBA does not set wages and benefits to the specific numbers of subscribers within those ranges and accordingly that specific number is entirely irrelevant to the bargaining relationship between our respective companies, as signatory employers, and the Guild. In fact, during the recent industry negotiations, the WGA accepted this concept from other SVOD platforms, such as Amazon Prime, Peacock, Apple TV+ and HBO Max, that only a subscriber range – and not the specific number of subscribers – was relevant. When we provided you with this information in October, you said you would review it and get back to us with any follow-up – which led to your December 15, 2020 email.

In cases like this one, where the union’s request for information pertains to matters outside of the bargaining unit, the union bears the burden of establishing its relevance. *See Walter N. Yoder & Sons, Inc. v. NLRB*, 754 F.2d 531, 535 (4th Cir.1985); *A.S. Abell, supra*, 624 F.2d at 510. A union must also provide facts that support its assertion of relevance and need. *See Rice Growers Ass'n of California, Inc.*, 312 N.L.R.B. 837, 838 (1993). The union has not established such facts in this matter.

If you have any reason to doubt the veracity of the subscriber ranges for both Hulu and Disney+, we hereby offer to meet and confer with you to discuss reasonable methods to confirm that information, which is highly confidential and proprietary to the online platforms. *Detroit Edison v. N.L.R.B.*, 440 U.S. 301 (1978).

Regards,

Mark and Seth

---

**From:** Joshua Wiser [<mailto:JWiser@wga.org>]  
**Sent:** Tuesday, December 15, 2020 4:47 PM  
**To:** Stevelman, Seth A. <[Seth.A.Stevelman@abc.com](mailto:Seth.A.Stevelman@abc.com)>  
**Cc:** Stubington, Mark <[Mark.Stubington@disney.com](mailto:Mark.Stubington@disney.com)>  
**Subject:** Demand for Domestic Subscribers as of July 1, 2020 for Disney+ and Hulu

Dear Mr. Stevelman:

On August 27, 2020, the Guild sent the attached information requests asking for the number of domestic subscribers for Hulu and Disney+ as of July 1, 2020. To date, the Company has failed to provide this information and has only offered that both services are within the tier of 20 million to 45 million subscribers, without substantiation.

The Guild is entitled to information that is "necessary and relevant" to its representation duties. (*NLRB v. ACME Industrial Co.*, 385 U.S. 432, 436 (1967)). The information is necessary to enforce the collective bargaining agreement as the number of subscribers to a streaming platform determines both initial compensation and residuals for high-budget original SVOD programs.

Without the requested information, the Guild cannot pursue an enforcement action against a particular company that is not in compliance with the MBA. Moreover, because the subscriber information impacts wages (both initial compensation and residuals), it is a mandatory subject of bargaining and is presumptively relevant to the Guild. Such information is necessary for the Guild to adequately prepare for and engage in collective bargaining with the companies.

For several years, Hulu, through its signatory entity Relentless Productions, LLC, has, like many other companies, provided the Guild with the requested subscriber information. The Guild has maintained the confidentiality of this information and remains willing to enter into a reasonable confidentiality agreement regarding the 2020 subscriber information.

If the Company is unwilling to provide the requested information by January 8, 2021, the Guild will pursue its legal remedies.

This email does not constitute a full recitation of the facts or positions of the Guild. Nothing contained herein is intended as an admission of any fact or a waiver of any right, remedy or position of the Guild or of any individual writer, each and all of which are hereby expressly reserved.

Cordially,

Josh Wiser

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JOSHUA WISER | SENIOR CONTRACTS COUNSEL | WRITERS GUILD OF AMERICA WEST | 7000 W. 3RD ST., LOS ANGELES, CA 90048 | (323) 782-4501 | [WGA](#)

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therein is strictly prohibited. Please notify the Writers Guild of America, West, immediately by reply e-mail or telephone, and delete the original message and all attachments from your system. Thank you

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# Exhibit U



## Joshua Wiser

---

**From:** Joshua Wiser  
**Sent:** Friday, February 19, 2021 3:27 PM  
**To:** Stevelman, Seth A.; Stubington, Mark  
**Cc:** Melissa Arbiter  
**Subject:** RE: Demand for Domestic Subscribers as of July 1, 2020 for Disney+ and Hulu

Seth:

As we have said repeatedly in prior correspondences, specific subscriber numbers are "necessary and relevant" to the Guild's bargaining duties, both in terms of enforcement and collective bargaining. The language in the CBA states "[t]he number of domestic subscribers shall be determined as of July 1st of each year" for the purposes of determining initial compensation and residuals. Without the number, the Guild cannot determine whether the subscriber tier is correct, which is required to carry out our essential enforcement duties. Similarly, as we have previously explained, the subscriber-tier levels are subject to negotiations every three years and the Guild must have access to specific subscriber numbers in order to understand subscriber trends. It is necessary that the Guild understand the specific subscriber totals for each SVOD service so it can adequately prepare for negotiations where either party may propose changes to the subscriber tiers.

Moreover, the offer to provide the subscriber numbers for Disney+ and Hulu to a third-party accounting firm is unacceptable as it continues to deprive the Guild of this specific information that is relevant and necessary to the Guild's bargaining duties. Your ability to share this information with a third-party demonstrates that you can share it confidentially with the Guild, which has been the practice for Hulu for several years.

Further, Disney's public disclosures do not use the MBA definition of subscribers, which substantiates our need for specific subscriber numbers.

We are promptly moving forward with filing a charge as we've met and conferred for weeks without any change in the Company's position.

Thank you for your attention to this matter.

Cordially,

Josh

---

JOSHUA WISER | SENIOR CONTRACTS COUNSEL | WRITERS GUILD OF AMERICA WEST | 7000 W. 3RD ST., LOS ANGELES, CA 90048 | (323) 782-4501 | [WGA](#)

---

**From:** Stevelman, Seth A. <Seth.A.Stevelman@abc.com>  
**Sent:** Friday, February 12, 2021 12:54 PM  
**To:** Joshua Wiser <JWiser@wga.org>; Stubington, Mark <Mark.Stubington@disney.com>  
**Cc:** Melissa Arbiter <marbiter@wga.org>  
**Subject:** RE: Demand for Domestic Subscribers as of July 1, 2020 for Disney+ and Hulu

Dear Mr. Wiser:

This will supplement our previous communications with you (which include our January 21 and other telephone conversations) and the various written correspondence below regarding the above-referenced matter.

To date, the WGA has failed to provide to the Companies a rationale explaining the purpose for its request to obtain *the exact number of subscribers* for Disney+. As we have discussed with you previously on many occasions, the only data relating to Disney+ subscribers that in any way affects the terms and conditions of bargaining unit employees under the WGA MBA is the subscriber **range** – which we already have provided to you. More pointedly, the rates, terms and conditions (including residuals) of the WGA MBA are determined solely by subscription tiers. The exact subscriber numbers within those tiers are immaterial.

Further, contrary to the WGA's assertion, we have discussed with you a willingness to substantiate the subscriber tier information that we have provided to you. We remind you of our last offer stated in both our January 21 email below and during our conversation with you that if you have any reason to doubt the veracity of our representation, we will meet and confer with you to discuss ways to confirm the information. Despite that offer, the WGA continues to request access to the specific subscriber number, implying that if it receives that number, the WGA somehow will have confirmed the subscriber tier. Yet that argument ignores the simple fact that the companies already have provided to the WGA the exact subscriber tier information that it purports to seek and even if we provide you with a specific number of subscribers, you could still come back and question the veracity of the number.

All of this said and with the desire to more directly address the WGA's desire to confirm the subscriber tier information for Disney+, the Companies propose that the parties engage an independent auditing/accounting firm which will be directed to independently confirm the subscriber tiers at issue. Such an endeavor will provide the WGA with confirmation of the veracity of information that it has been provided in this matter. Please let us know if the WGA is agreeable to this proposal and if not, please let us know why this does not work.

Finally, as it relates to Hulu, since Hulu does not have a foreign presence, the number that is publicly disclosed in the earnings reports is the number of domestic subscribers for Hulu. Note that while Hulu reports that number publicly, such information for such domestic subscribers is not reported publicly for Disney+ (which has a domestic and international presence). Such information is considered by Disney+ to be highly confidential and proprietary.

We look forward to your response.

Regards,

Mark and Seth

---

**From:** Joshua Wiser [<mailto:JWiser@wga.org>]

**Sent:** Friday, February 5, 2021 8:47 AM

**To:** Stevelman, Seth A. <[Seth.A.Stevelman@abc.com](mailto:Seth.A.Stevelman@abc.com)>; Stubington, Mark <[Mark.Stubington@disney.com](mailto:Mark.Stubington@disney.com)>

**Cc:** Melissa Arbiter <[marbiter@wga.org](mailto:marbiter@wga.org)>

**Subject:** RE: Demand for Domestic Subscribers as of July 1, 2020 for Disney+ and Hulu

Dear Mr. Stevelman:

I'm writing in reference to the Guild's August 27, 2020 information requests in which we asked for the number of domestic subscribers for Hulu and Disney+ as of July 1, 2020. To date, the Company has failed to provide this information and has only offered that both services are within the tier of 20 million to 45 million subscribers, without substantiation.

This specific information is critical to the Guild. Initial compensation and residual compensation for high budget SVOD programs is based on the number of domestic subscribers to the streaming platform in the United States and Canada as of July 1, 2020 under Paragraph 4.e.(2)(c) of the New Media Sideletter of the MBA. Disney claims, but refuses to substantiate, that both Disney+ and Hulu have less than 45 million subscribers. Disney's public financial disclosures indicate Disney+ may have more than 45 million domestic subscribers. The Guild has repeatedly requested this necessary and relevant information to carry out its enforcement and collective bargaining duties.

Specific subscriber information is "necessary and relevant" to the Guild's bargaining duties, both in terms of enforcement and collective bargaining. *NLRB v. ACME Industrial Co.*, 385 U.S. 432, 436 (1967); *see also Press Democrat Pub. Co. v. NLRB*, 629 F.2d 1320, 1324 (9th Cir. 1980) (holding mandatory subjects of bargaining "pertaining to wages, hours or conditions of employment, is presumptively relevant, and must be disclosed unless the employer proves a lack of relevance"). The subscriber-tier levels are subject to negotiations every three years and the Guild must understand actual subscriber trends. Changes to the tier thresholds were negotiated as part of the 2014 and 2017 MBAs. It is necessary that the Guild understand the specific subscriber totals for each SVOD service so it can adequately prepare for negotiations where either party may propose changes to the subscriber tiers.

The specific subscriber numbers are also necessary and relevant for purposes of enforcement. The Guild has a right to basic information such as subscriber totals to confirm that writers are properly compensated. The MBA provides a specific definition of subscriber that can only be confirmed by the Company providing the appropriate subscriber numbers.

As signatory employers, Relentless Productions, Twentieth Century Fox Film Corp., and Walt Disney Pictures have an obligation to take reasonable and necessary steps to obtain information from third parties that is necessary and relevant to the Guild's bargaining duties. *In Re Int'l Protective Servs., Inc.*, 339 NLRB 701, 705 (2003) (holding "an employer has a duty to supply relevant requested information which may not be in its possession, but where the information likely can be obtained from a third party with whom the employer has a business relationship"); *see also W. Penn Power Co. v. NLRB*, 394 F.3d 233, 245 (4th Cir. 2005) (holding an employer has an "affirmative obligation to make reasonable efforts to obtain [from its parent] relevant information ... needed by the Union to police the collective bargaining agreement").

In response to the Guild's prior requests for information regarding monthly subscriber numbers relevant to the 2014 MBA and annual subscriber numbers in 2018 and 2019, Relentless Productions put the Guild in direct contact with Hulu employees who provided the specific number of subscribers, not the mere range that Disney is offering now. Relentless Productions is part of the Disney corporation, which is the majority owner of Hulu and Disney+, and Disney publicly reports subscriber totals to shareholders. Relentless Productions, Twentieth Century Fox Film Corp., and Walt Disney Pictures have an obligation to obtain subscriber information from within its parent corporation and a practice exists for doing precisely that for Hulu.

The Guild stands ready to meet and confer to address any legitimate confidentially concerns, and has attached the Confidentiality Agreement we've previously entered into with Hulu slightly modified and tracked in redline to include Disney+. However, in the event the Company fails to provide the requested subscriber numbers for Disney+ and Hulu by the close of business on Friday, February 12th, the Guild intends to file a charge.

Cordially,

Josh

JOSHUA WISER | SENIOR CONTRACTS COUNSEL | WRITERS GUILD OF AMERICA WEST | 7000 W. 3RD ST., LOS ANGELES, CA 90048 | (323) 782-4501 | [WGA](#)

**From:** Stevelman, Seth A. <[Seth.A.Stevelman@abc.com](mailto:Seth.A.Stevelman@abc.com)>

**Sent:** Thursday, January 21, 2021 1:42 PM

**To:** Joshua Wiser <[JWiser@wga.org](mailto:JWiser@wga.org)>

**Cc:** Stubington, Mark <[Mark.Stubington@disney.com](mailto:Mark.Stubington@disney.com)>

**Subject:** RE: Demand for Domestic Subscribers as of July 1, 2020 for Disney+ and Hulu

Dear Mr. Wiser:

This is in response to your email of December 15, 2020 relating to your request for specific subscriber information for both Hulu and Disney+. For your information, these are online platforms that are not themselves employers of bargaining unit employees.

As a foundational matter, we as signatory employers do not possess the specific subscriber information that you are demanding. Rather, that highly sensitive business information is controlled by the online platforms themselves that have not voluntarily provided that information to this company. *Howe K. Sipes Co.*, 319 N.L.R.B. 30, 38 (1995) (“[A]n employer can be expected to supply only that information which it actually possesses or it can reasonably acquire. There is no requirement that, in response to a request for information, an employer conduct independent cost studies or analysis”); *Korn Indus., Inc. v. NLRB*, 389 F.2d 117, 123 (4th Cir.1967) (same).

As you may recall, Mark Stubington and I discussed this matter with you in early October and based on information that the signatory employers possessed at that time, we informed you that the number of domestic subscribers for both Hulu and Disney+ fell within the range of 20 million to 45 million. This information about the subscriber range (which continues to be accurate), rather than any specific number within that range, is the only data that in any way affects the terms and conditions of bargaining unit employees. Specifically, the CBA sets certain wages and benefits to several different ranges of domestic subscribers. The CBA does not set wages and benefits to the specific numbers of subscribers within those ranges and accordingly that specific number is entirely irrelevant to the bargaining relationship between our respective companies, as signatory employers, and the Guild. In fact, during the recent industry negotiations, the WGA accepted this concept from other SVOD platforms, such as Amazon Prime, Peacock, Apple TV+ and HBO Max, that only a subscriber range – and not the specific number of subscribers – was relevant. When we provided you with this information in October, you said you would review it and get back to us with any follow-up – which led to your December 15, 2020 email.

In cases like this one, where the union’s request for information pertains to matters outside of the bargaining unit, the union bears the burden of establishing its relevance. *See Walter N. Yoder & Sons, Inc. v. NLRB*, 754 F.2d 531, 535 (4th Cir.1985); *A.S. Abell, supra*, 624 F.2d at 510. A union must also provide facts that support its assertion of relevance and need. *See Rice Growers Ass’n of California, Inc.*, 312 N.L.R.B. 837, 838 (1993). The union has not established such facts in this matter.

If you have any reason to doubt the veracity of the subscriber ranges for both Hulu and Disney+, we hereby offer to meet and confer with you to discuss reasonable methods to confirm that information, which is highly confidential and proprietary to the online platforms. *Detroit Edison v. N.L.R.B.*, 440 U.S. 301 (1978).

Regards,

Mark and Seth

---

**From:** Joshua Wiser [<mailto:JWiser@wga.org>]

**Sent:** Tuesday, December 15, 2020 4:47 PM

**To:** Stevelman, Seth A. <[Seth.A.Stevelman@abc.com](mailto:Seth.A.Stevelman@abc.com)>

**Cc:** Stubington, Mark <[Mark.Stubington@disney.com](mailto:Mark.Stubington@disney.com)>

**Subject:** Demand for Domestic Subscribers as of July 1, 2020 for Disney+ and Hulu

Dear Mr. Stevelman:

On August 27, 2020, the Guild sent the attached information requests asking for the number of domestic subscribers for Hulu and Disney+ as of July 1, 2020. To date, the Company has failed to provide this information and has only offered that both services are within the tier of 20 million to 45 million subscribers, without substantiation.

The Guild is entitled to information that is "necessary and relevant" to its representation duties. (*NLRB v. ACME Industrial Co.*, 385 U.S. 432, 436 (1967)). The information is necessary to enforce the collective bargaining agreement as the number of subscribers to a streaming platform determines both initial compensation and residuals for high-budget original SVOD programs.

Without the requested information, the Guild cannot pursue an enforcement action against a particular company that is not in compliance with the MBA. Moreover, because the subscriber information impacts wages (both initial compensation and residuals), it is a mandatory subject of bargaining and is presumptively relevant to the Guild. Such information is necessary for the Guild to adequately prepare for and engage in collective bargaining with the companies.

For several years, Hulu, through its signatory entity Relentless Productions, LLC, has, like many other companies, provided the Guild with the requested subscriber information. The Guild has maintained the confidentiality of this information and remains willing to enter into a reasonable confidentiality agreement regarding the 2020 subscriber information.

If the Company is unwilling to provide the requested information by January 8, 2021, the Guild will pursue its legal remedies.

This email does not constitute a full recitation of the facts or positions of the Guild. Nothing contained herein is intended as an admission of any fact or a waiver of any right, remedy or position of the Guild or of any individual writer, each and all of which are hereby expressly reserved.

Cordially,

Josh Wiser

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# **Exhibit V**

## Joshua Wiser

---

**From:** Joshua Wiser  
**Sent:** Friday, February 19, 2021 3:43 PM  
**To:** Stevelman, Seth A.; Stubington, Mark  
**Cc:** Melissa Arbiter  
**Subject:** RE: Demand for Domestic Subscribers as of July 1, 2020 for Disney+ and Hulu  
**Attachments:** Charge - 8(a)(5) Information Request.pdf

Please find attached the charge we e-filed with the NRLB.

---

**From:** Joshua Wiser  
**Sent:** Friday, February 19, 2021 3:27 PM  
**To:** Stevelman, Seth A. <Seth.A.Stevelman@abc.com>; Stubington, Mark <Mark.Stubington@disney.com>  
**Cc:** Melissa Arbiter <marbiter@wga.org>  
**Subject:** RE: Demand for Domestic Subscribers as of July 1, 2020 for Disney+ and Hulu

Seth:

As we have said repeatedly in prior correspondences, specific subscriber numbers are "necessary and relevant" to the Guild's bargaining duties, both in terms of enforcement and collective bargaining. The language in the CBA states "[t]he **number** of domestic subscribers shall be determined as of July 1st of each year" for the purposes of determining initial compensation and residuals. Without the number, the Guild cannot determine whether the subscriber tier is correct, which is required to carry out our essential enforcement duties. Similarly, as we have previously explained, the subscriber-tier levels are subject to negotiations every three years and the Guild must have access to specific subscriber numbers in order to understand subscriber trends. It is necessary that the Guild understand the specific subscriber totals for each SVOD service so it can adequately prepare for negotiations where either party may propose changes to the subscriber tiers.

Moreover, the offer to provide the subscriber numbers for Disney+ and Hulu to a third-party accounting firm is unacceptable as it continues to deprive the Guild of this specific information that is relevant and necessary to the Guild's bargaining duties. Your ability to share this information with a third-party demonstrates that you can share it confidentially with the Guild, which has been the practice for Hulu for several years.

Further, Disney's public disclosures do not use the MBA definition of subscribers, which substantiates our need for specific subscriber numbers.

We are promptly moving forward with filing a charge as we've met and conferred for weeks without any change in the Company's position.

Thank you for your attention to this matter.

Cordially,

Josh

---

JOSHUA WISER | SENIOR CONTRACTS COUNSEL | WRITERS GUILD OF AMERICA WEST | 7000 W. 3RD ST., LOS ANGELES, CA 90048 | (323) 782-4501 | [WGA](#)

---

**From:** Stevelman, Seth A. <[Seth.A.Stevelman@abc.com](mailto:Seth.A.Stevelman@abc.com)>  
**Sent:** Friday, February 12, 2021 12:54 PM



**To:** Joshua Wiser <[JWiser@wga.org](mailto:JWiser@wga.org)>; Stubington, Mark <[Mark.Stubington@disney.com](mailto:Mark.Stubington@disney.com)>

**Cc:** Melissa Arbiter <[marbiter@wga.org](mailto:marbiter@wga.org)>

**Subject:** RE: Demand for Domestic Subscribers as of July 1, 2020 for Disney+ and Hulu

Dear Mr. Wiser:

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We look forward to your response.

Regards,

Mark and Seth

---

**From:** Joshua Wiser [<mailto:JWiser@wga.org>]

**Sent:** Friday, February 5, 2021 8:47 AM

**To:** Stevelman, Seth A. <[Seth.A.Stevelman@abc.com](mailto:Seth.A.Stevelman@abc.com)>; Stubington, Mark <[Mark.Stubington@disney.com](mailto:Mark.Stubington@disney.com)>

**Cc:** Melissa Arbiter <[marbiter@wga.org](mailto:marbiter@wga.org)>

**Subject:** RE: Demand for Domestic Subscribers as of July 1, 2020 for Disney+ and Hulu



Dear Mr. Stevelman:

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Specific subscriber information is "necessary and relevant" to the Guild's bargaining duties, both in terms of enforcement and collective bargaining. *NLRB v. ACME Industrial Co.*, 385 U.S. 432, 436 (1967); *see also Press Democrat Pub. Co. v. NLRB*, 629 F.2d 1320, 1324 (9th Cir. 1980) (holding mandatory subjects of bargaining "pertaining to wages, hours or conditions of employment, is presumptively relevant, and must be disclosed unless the employer proves a lack of relevance"). The subscriber-tier levels are subject to negotiations every three years and the Guild must understand actual subscriber trends. Changes to the tier thresholds were negotiated as part of the 2014 and 2017 MBAs. It is necessary that the Guild understand the specific subscriber totals for each SVOD service so it can adequately prepare for negotiations where either party may propose changes to the subscriber tiers.

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As signatory employers, Relentless Productions, Twentieth Century Fox Film Corp., and Walt Disney Pictures have an obligation to take reasonable and necessary steps to obtain information from third parties that is necessary and relevant to the Guild's bargaining duties. *In Re Int'l Protective Servs., Inc.*, 339 NLRB 701, 705 (2003) (holding "an employer has a duty to supply relevant requested information which may not be in its possession, but where the information likely can be obtained from a third party with whom the employer has a business relationship"); *see also W. Penn Power Co. v. NLRB*, 394 F.3d 233, 245 (4th Cir. 2005) (holding an employer has an "affirmative obligation to make reasonable efforts to obtain [from its parent] relevant information ... needed by the Union to police the collective bargaining agreement").

In response to the Guild's prior requests for information regarding monthly subscriber numbers relevant to the 2014 MBA and annual subscriber numbers in 2018 and 2019, Relentless Productions put the Guild in direct contact with Hulu employees who provided the specific number of subscribers, not the mere range that Disney is offering now. Relentless Productions is part of the Disney corporation, which is the majority owner of Hulu and Disney+, and Disney publicly reports subscriber totals to shareholders. Relentless Productions, Twentieth Century Fox Film Corp., and Walt Disney Pictures have an obligation to obtain subscriber information from within its parent corporation and a practice exists for doing precisely that for Hulu.

The Guild stands ready to meet and confer to address any legitimate confidentially concerns, and has attached the Confidentiality Agreement we've previously entered into with Hulu slightly modified and tracked in redline to include Disney+. However, in the event the Company fails to provide the requested subscriber numbers for Disney+ and Hulu by the close of business on Friday, February 12th, the Guild intends to file a charge.

Cordially,

Josh

JOSHUA WISER | SENIOR CONTRACTS COUNSEL | WRITERS GUILD OF AMERICA WEST | 7000 W. 3RD ST., LOS ANGELES, CA 90048 | (323) 782-4501 | [WGA](#)

**From:** Stevelman, Seth A. <[Seth.A.Stevelman@abc.com](mailto:Seth.A.Stevelman@abc.com)>

**Sent:** Thursday, January 21, 2021 1:42 PM

**To:** Joshua Wiser <[JWiser@wga.org](mailto:JWiser@wga.org)>

**Cc:** Stubington, Mark <[Mark.Stubington@disney.com](mailto:Mark.Stubington@disney.com)>

**Subject:** RE: Demand for Domestic Subscribers as of July 1, 2020 for Disney+ and Hulu

Dear Mr. Wiser:

This is in response to your email of December 15, 2020 relating to your request for specific subscriber information for both Hulu and Disney+. For your information, these are online platforms that are not themselves employers of bargaining unit employees.

As a foundational matter, we as signatory employers do not possess the specific subscriber information that you are demanding. Rather, that highly sensitive business information is controlled by the online platforms themselves that have not voluntarily provided that information to this company. *Howe K. Sipes Co.*, 319 N.L.R.B. 30, 38 (1995) (“[A]n employer can be expected to supply only that information which it actually possesses or it can reasonably acquire. There is no requirement that, in response to a request for information, an employer conduct independent cost studies or analysis”); *Korn Indus., Inc. v. NLRB*, 389 F.2d 117, 123 (4th Cir.1967) (same).

As you may recall, Mark Stubington and I discussed this matter with you in early October and based on information that the signatory employers possessed at that time, we informed you that the number of domestic subscribers for both Hulu and Disney+ fell within the range of 20 million to 45 million. This information about the subscriber range (which continues to be accurate), rather than any specific number within that range, is the only data that in any way affects the terms and conditions of bargaining unit employees. Specifically, the CBA sets certain wages and benefits to several different ranges of domestic subscribers. The CBA does not set wages and benefits to the specific numbers of subscribers within those ranges and accordingly that specific number is entirely irrelevant to the bargaining relationship between our respective companies, as signatory employers, and the Guild. In fact, during the recent industry negotiations, the WGA accepted this concept from other SVOD platforms, such as Amazon Prime, Peacock, Apple TV+ and HBO Max, that only a subscriber range – and not the specific number of subscribers – was relevant. When we provided you with this information in October, you said you would review it and get back to us with any follow-up – which led to your December 15, 2020 email.

In cases like this one, where the union’s request for information pertains to matters outside of the bargaining unit, the union bears the burden of establishing its relevance. *See Walter N. Yoder & Sons, Inc. v. NLRB*, 754 F.2d 531, 535 (4th Cir.1985); *A.S. Abell, supra*, 624 F.2d at 510. A union must also provide facts that support its assertion of relevance and need. *See Rice Growers Ass’n of California, Inc.*, 312 N.L.R.B. 837, 838 (1993). The union has not established such facts in this matter.

If you have any reason to doubt the veracity of the subscriber ranges for both Hulu and Disney+, we hereby offer to meet and confer with you to discuss reasonable methods to confirm that information, which is highly confidential and proprietary to the online platforms. *Detroit Edison v. N.L.R.B.*, 440 U.S. 301 (1978).

Regards,

Mark and Seth

---

**From:** Joshua Wiser [<mailto:JWiser@wga.org>]  
**Sent:** Tuesday, December 15, 2020 4:47 PM  
**To:** Stevelman, Seth A. <[Seth.A.Stevelman@abc.com](mailto:Seth.A.Stevelman@abc.com)>  
**Cc:** Stubington, Mark <[Mark.Stubington@disney.com](mailto:Mark.Stubington@disney.com)>  
**Subject:** Demand for Domestic Subscribers as of July 1, 2020 for Disney+ and Hulu

Dear Mr. Stevelman:

On August 27, 2020, the Guild sent the attached information requests asking for the number of domestic subscribers for Hulu and Disney+ as of July 1, 2020. To date, the Company has failed to provide this information and has only offered that both services are within the tier of 20 million to 45 million subscribers, without substantiation.

The Guild is entitled to information that is "necessary and relevant" to its representation duties. (*NLRB v. ACME Industrial Co.*, 385 U.S. 432, 436 (1967)). The information is necessary to enforce the collective bargaining agreement as the number of subscribers to a streaming platform determines both initial compensation and residuals for high-budget original SVOD programs.

Without the requested information, the Guild cannot pursue an enforcement action against a particular company that is not in compliance with the MBA. Moreover, because the subscriber information impacts wages (both initial compensation and residuals), it is a mandatory subject of bargaining and is presumptively relevant to the Guild. Such information is necessary for the Guild to adequately prepare for and engage in collective bargaining with the companies.

For several years, Hulu, through its signatory entity Relentless Productions, LLC, has, like many other companies, provided the Guild with the requested subscriber information. The Guild has maintained the confidentiality of this information and remains willing to enter into a reasonable confidentiality agreement regarding the 2020 subscriber information.

If the Company is unwilling to provide the requested information by January 8, 2021, the Guild will pursue its legal remedies.

This email does not constitute a full recitation of the facts or positions of the Guild. Nothing contained herein is intended as an admission of any fact or a waiver of any right, remedy or position of the Guild or of any individual writer, each and all of which are hereby expressly reserved.

Cordially,

Josh Wiser

---

JOSHUA WISER | SENIOR CONTRACTS COUNSEL | WRITERS GUILD OF AMERICA WEST | 7000 W. 3RD ST., LOS ANGELES, CA 90048 | (323) 782-4501 | [WGA](#)

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# **Exhibit W**

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
**CHARGE AGAINST EMPLOYER**

DO NOT WRITE IN THIS SPACE	
Case	Date Filed

**INSTRUCTIONS:**

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

**1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT**

a. Name of Employer Walt Disney Pictures, Twentieth Century Fox Film Corp., and Relentless Productions, LLC		b. Tel. No.
		c. Cell No. (818) 397-2962
		f. Fax. No.
d. Address (Street, city, state, and ZIP code) 500 S Buena Vista Street Burbank, CA 91521-7470	e. Employer Representative Seth Stevelman	g. e-mail Seth.A.Stevelman@disney.com
		h. Number of workers employed 500
i. Type of Establishment (factory, mine, wholesaler, etc.) Motion Picture Producer	j. Identify principal product or service Motion Picture Programs and Series Made for Distribution on the Internet	

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) **5** of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

**2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)**  
8(a)(5) – Within the previous six months, the Employer failed and refused to bargain in good faith with the Union as the collective bargaining representative of its employees by failing to furnish information requested by the Union.

Date Requested: 08/27/2020

Employer Representative: Seth Stevelman

List Items Requested: Domestic Subscriber Numbers for Disney+ and Hulu

Date Refused: 2/12/2021

**3. Full name of party filing charge (if labor organization, give full name, including local name and number)**  
Joshua Wiser, Senior Contracts Counsel, Writers Guild of America West

4a. Address (Street and number, city, state, and ZIP code) 7000 W. 3rd Street Los Angeles, CA 90048-4321	4b. Tel. No. (323) 782-4501
	4c. Cell No.
	4d. Fax No.
	4e. e-mail jwiser@wga.org

**5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)**

**6. DECLARATION**

I declare that I have read the above charge and that the statements  
are true to the best of my knowledge and belief.

/s/ Joshua Wiser

Joshua Wiser, Senior Contracts Counsel

(signature of representative or person making charge)

(Print/type name and title or office, if any)

Tel. No.  
(323) 782-4501

Office, if any, Cell No.

Fax No.

e-mail  
jwiser@wga.org

Address 7000 W. 3rd Street, Los Angeles, CA 90048-4321

Date 2/19/2021

**WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)  
PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information may cause the NLRB to decline to invoke its processes.

NATIONAL LABOR RELATIONS BOARD

NOTICE OF APPEARANCE

Writers Guild of America West

and

Walt Disney Pictures, Twentieth Century Fox Film Corp.  
and Relentless Productions, LLC

CASE 31-CA-273063

☒ REGIONAL DIRECTOR

☐ EXECUTIVE SECRETARY  
NATIONAL LABOR RELATIONS BOARD  
Washington, DC 20570

☐ GENERAL COUNSEL  
NATIONAL LABOR RELATIONS BOARD  
Washington, DC 20570

THE UNDERSIGNED HEREBY ENTERS APPEARANCE AS REPRESENTATIVE OF \_\_\_\_\_

Walt Disney Pictures, Twentieth Century Fox Film Corp. and Relentless Productions, LLC

IN THE ABOVE-CAPTIONED MATTER.

CHECK THE APPROPRIATE BOX(ES) BELOW:

☒ REPRESENTATIVE IS AN ATTORNEY

☐ IF REPRESENTATIVE IS AN ATTORNEY, IN ORDER TO ENSURE THAT THE PARTY MAY RECEIVE COPIES OF CERTAIN DOCUMENTS OR CORRESPONDENCE FROM THE AGENCY IN ADDITION TO THOSE DESCRIBED BELOW, THIS BOX MUST BE CHECKED. IF THIS BOX IS NOT CHECKED, THE PARTY WILL RECEIVE ONLY COPIES OF CERTAIN DOCUMENTS SUCH AS CHARGES, PETITIONS AND FORMAL DOCUMENTS AS DESCRIBED IN SEC. 11842.3 OF THE CASEHANDLING MANUAL.

(REPRESENTATIVE INFORMATION)

NAME: Mark A. Wasserman

MAILING ADDRESS: Mitchell Silberberg & Knupp LLP, 2049 Century Park East, 18th Floor, Los Angeles, CA  
90067

E-MAIL ADDRESS: maw@msk.com

OFFICE TELEPHONE NUMBER: (310) 312-3174

CELL PHONE NUMBER: (310) 251-1636 FAX: (310) 231-8374

SIGNATURE: \_\_\_\_\_  
(Please sign in ink.)

DATE: \_\_\_\_\_

<sup>1</sup> IF CASE IS PENDING IN WASHINGTON AND NOTICE OF APPEARANCE IS SENT TO THE GENERAL COUNSEL OR THE EXECUTIVE SECRETARY, A COPY SHOULD BE SENT TO THE REGIONAL DIRECTOR OF THE REGION IN WHICH THE CASE WAS FILED SO THAT THOSE RECORDS WILL REFLECT THE APPEARANCE.





MITCHELL SILBERBERG & KNUPP LLP  
A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

Mark A. Wasserman  
A Professional Corporation  
(310) 312-3174 Phone  
(310) 231-8316 Fax  
maw@msk.com

May 12, 2021

**VIA E-FILE AND EMAIL (*marissa.dagdagan@nlrb.gov*)**

Marissa Dagdagan, Esq.  
Field Attorney  
United States Government  
National Labor Relations Board, Region 31  
11500 W. Olympic Blvd., Suite 600  
Los Angeles, CA 90064-1753

**Re: Charge 31-CA-273063 (Walt Disney Pictures, Twentieth Century Fox Film Corp. and Relentless Productions, LLC)**

Dear Ms. Dagdagan:

We represent Walt Disney Pictures, Twentieth Century Fox Film Corp. and Relentless Productions, LLC (collectively, “Companies” or “Respondents”) in connection with the above-referenced Charge filed by the Writers Guild of America, West (“WGA” or the “Guild”). We now respond to the Region’s April 21, 2020 letter requesting the Companies’ statement of position regarding allegations that they violated the National Labor Relations Act (“Act”) by failing to provide extensive and confidential paid subscriber information for online platforms Hulu and Disney+, to the WGA.

As set forth at greater length below, this dispute centers on the Guild’s requests that Hulu and Disney+ turn over *exact numbers* of paid domestic subscribers, subscribers during specific trial periods and subscribers acquired through third-party partnerships. As a preliminary matter, because Hulu does not have a foreign presence and makes its number of overall subscribers (consisting of only domestic subscribers) public, Respondents provided the Guild with the requested number by directing it to Hulu’s released earnings and confirming the accuracy of the number in subsequent telephone communications. As such, this data subset relating to Hulu should not be at issue here since the information was already provided. The same is true for information concerning subscribers during specific trial periods and subscribers acquired through third-party partnerships, which the Companies also verbally communicated to the Guild.

At issue remains the rest of the information requested by the Guild related to Disney+ – namely, the platform’s exact number of paid domestic subscribers, which is not relevant to any of the Guild’s legitimate purposes and, in any event, is protected by significant trade secrecy interests. In fact, this type of data is the sort of non-public information that is closely guarded by the platform to avoid insider trading and “tip” concerns and otherwise to protect the integrity of the public trading system. Although Disney offered to mitigate these concerns by submitting material to an agreed accounting service, the Guild has refused to even engage in these

mitigation discussions and instead proceeded directly to filing this ULP charge. Disney's legitimate confidentiality concerns completely outweigh the Guild's tenuous relevance arguments.

This information has no reasonable connection to the Guild's administration of the parties' collective bargaining agreement or any future bargaining proposals – the only two broad reasons the Guild has offered to substantiate its requests, and the latter of which was only offered belatedly, after Respondents' repeated questioning of the Guild's purported contract enforcement needs. Exact numbers of paid domestic subscribers do not directly impact terms and conditions of writers' employment. Rather, domestic *subscriber-tier levels*, or *ranges* do, and that information was readily turned over to the Guild. Not only that, but Respondents attempted to accommodate the Guild's alleged need to verify the information by offering to have an independent, third-party, auditor review the underlying data and confirm the veracity of Respondents' representations. Although the suggested accommodation would have provided the Guild with everything it needed to determine whether it should pursue any enforcement action under the collective bargaining agreement, the Guild rejected the accommodation without explanation. In doing so, the Guild failed in its obligation to engage in good faith in the interactive process required under the circumstances, and to carry its burden to demonstrate that the suggested accommodation is inadequate and the Guild's purported need for the raw, underlying data outweighs Respondents' interests in maintaining the data confidential.

As to the Guild's explanation that it needs the underlying data in order to "adequately prepare for negotiations," it is directly undermined by the fact that its requests came almost immediately *after the conclusion* of the 2020 negotiations between the Alliance of Motion Picture and Television Producers ("AMPTP") and WGA for a successor collective bargaining agreement. Indeed, the Guild participated in the negotiations for many months and was able to reach an overall agreement with the AMPTP in July 2020 for a successor agreement (with a term through 2023), including on subscriber tiers. WGA membership ratified that agreement on or about July 29, 2020, and the WGA did not issue its request for information to the Companies until approximately one month after the ratification. As the Board has explained, a union cannot demonstrate that requested information is relevant based on general assertions of a need to bargain intelligently, especially where there are no ongoing or pending negotiations.

As such, and as more fully discussed below, Respondents have fulfilled their obligations under the Act and continue to do so by remaining willing to confer to reach reasonable accommodations that address both the Guild's legitimate needs and Respondents' confidentiality interests. It is the Guild that falls short of its obligations, by outright refusing to consider Respondents' proposals and improperly insisting on obtaining detailed data irrelevant to the Guild's representative functions.



## 1. Statement of Facts

### *a. The Collective Bargaining Relationship*

Respondents are producers of motion pictures and signatories to the WGA Theatrical and Television Basic Agreement (“MBA”). *See* Writers Guild of America Theatrical and Television Basic Agreement effective May 2, 2017 through May 1, 2020 and Memorandum of Agreement for the 2020 WGA Theatrical and Basic Agreement, attached as **Exhibits A and B**. As relevant here, the MBA sets forth minimum wage requirements and other terms and conditions for persons employed by Respondents as writers. **Exhibit A**, Articles 9, 13, 23-25. The MBA also contains a Sideletter on Literary Material Written for Programs Made for New Media (“New Media Sideletter”), which extends the MBA to literary material written for exhibition on the Internet, mobile devices or other New Media Platforms. *See* Sideletter on Literary Material Written for Programs Made for New Media, Revised as of May 2, 2017, attached as **Exhibit C**. As part of this Sideletter, Respondents and the Guild have negotiated terms and conditions of employment, such as those surrounding the payment of wages and residuals, for various Made for New Media productions, based, *inter alia*, on the *subscriber tiers*, or *ranges* of paid domestic subscribership of the platform on which the new media production is exhibited. *Id.*, pp. 636-44. The MBA does *not* set wages and benefits to the specific numbers of subscribers within those ranges. *Id.*

### *b. The Information Requests*

On July 1, 2020, the Guild and the producers announced that after months of negotiations toward a successor MBA, they reached a tentative agreement governing writers’ terms and conditions of employment through May 1, 2023, including on New Media productions.<sup>1</sup> Guild members ratified that agreement on or about July 29, 2020. During the course of the negotiations leading to the agreement, the Guild made a proposal seeking that signatories report, on a yearly basis, the specific numbers of domestic and foreign subscribers of streaming services from AMPTP companies.<sup>2</sup> The Guild later withdrew this proposal.

On August 27, 2020, *after* the completion of negotiations, the Guild propounded the information requests (“Requests”) at issue here, which sought the following information:

1. The number of paid domestic (U.S. and Canada) subscribers to the Disney+ and Hulu consumer pay services as of July 1, 2020;

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<sup>1</sup> *See, e.g., WGA & Producers Reach Tentative Deal on New Film & TV Contract, Averting Strike During Pandemic*, <https://deadline.com/2020/07/wga-producers-reach-deal-film-tv-contract-1202974353/>, dated July 1, 2020.

<sup>2</sup> Specifically, the Guild’s proposal sought that each service provide the number of domestic and foreign subscribers on its platform no later than July 30 of each year.

2. The number of domestic (U.S. and Canada) subscribers with access to Disney+ and Hulu during a “free trial” period of more than 30 days;
3. The number of domestic (U.S. and Canada) subscribers with access to Disney+ and Hulu during a “free trial” period of 30 days or less; and
4. The number of paid domestic (U.S. and Canada) subscribers with access to Disney+ and Hulu acquired through a partnership with a third-party, if any.

See August 27, 2020 Letters from Joshua Wiser, WGA Senior Contracts Counsel, to (b) (6), (b) (7)(C) [redacted] Walt Disney Studios (b) (6), (b) (7)(C) [redacted], and (b) (6), (b) (7)(C) [redacted] at Relentless Productions, attached as **Exhibits D** and **E**.

In October 2020, Respondents provided the Guild with information responsive to all four of the Guild’s requests. As for the Guild’s Request No. 1 seeking the number of domestic subscribers for both Hulu and Disney+, Respondents informed Josh Wiser that the subscriber numbers for both platforms were within the Tier 4 range of 20 million to 45 million.<sup>3</sup> As for the Guild’s Requests Nos. 2 and 3, Respondents informed Josh Wiser that the numbers requested were relatively few (effectively close to zero). As for the Guild’s Request No. 4, Respondents informed Josh Wiser that the number of subscribers acquired through a partnership with a 3<sup>rd</sup> party were included in the overall tier of subscribers communicated to the Guild in response to Request No. 1.

Thereafter, from October 2020 through January 2021, the parties engaged in numerous telephone conversations and written communications about the Requests, during which the Guild insisted that it needed exact domestic subscriber numbers for Disney+ and Hulu. At first, the Guild stated that the reason for this was to enable the WGA to enforce its collective bargaining agreement and confirm that the ranges provided by the Companies were correct. *See, e.g.*, December 15, 2020 Email from Weiser to Seth Stevelman, Walt Disney Television Vice President & Counsel, Labor Relations, attached as **Exhibit F**. Respondents repeatedly pointed out that the reasons advanced by the Guild were flawed. Because the MBA addresses subscriber tiers, not exact numbers, the only information the Guild should need to enforce the agreement concerns those tiers.<sup>4</sup> Moreover, even if Respondents did share the exact numbers, the Guild could always argue that it did not believe and would want to further verify *those*.

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<sup>3</sup> This tier is set forth in the MBA. *See Exhibit C*, p. 641.

<sup>4</sup> While the Guild pointed out that the MBA provides the “number” of domestic subscribers is to be determined in July of each year, the MBA does not require the number to be turned over to the Guild. *See, e.g.*, February 19, 2021 email from Weiser to Stevelman, et al., attached as **Exhibit H**. Rather, the only requirement is that a signatory assess the number for purposes of determining the subscriber tier range within which the signatory falls, as it is the tier range that determines writer compensation, among other things. Indeed, if the Guild believed the MBA imposed such a requirement, it would not have needed to propose it during the 2020 negotiations, or it would have invoked the Agreement’s arbitration provisions.

Nonetheless, Respondents informed the Guild that the total number of subscribers for Hulu (which is a domestic service only) are reported publicly in the company's financial earnings statements and accordingly pointed the Guild to this data as available in Hulu's financial earnings released on August 4, 2020. See August 4, 2020 Release Titled *The Walt Disney Company Reports Third Quarter and Nine Months Earnings for Fiscal 2020*, <https://thewaltdisneycompany.com/app/uploads/2020/08/q3-fy20-earnings.pdf>, p. 6; February 12, 2021 Email from Stevelman to Weiser, attached as **Exhibit G**. On a subsequent call between the parties, Josh Wiser went over the August 4, 2020 earnings report and asked if the subscriber information on page 6 of that report was correct. Respondents confirmed that it was.

With respect to Disney+ (which is worldwide service that has launched in certain international markets), however, Respondents explained that while total subscriber numbers (combining domestic and international subscribers) were publicly available, the portion of that total that reflected the domestic subscriber base constituted highly sensitive and proprietary business information that the online platform wished to safeguard. See January 21, 2021 Email from Stevelman to Weiser, attached as **Exhibit G**.

Nonetheless, wishing to engage in an interactive process in good faith and to find a solution that addressed any need by the Guild to confirm that the number of Disney+ domestic subscribers fell within the represented range, Respondents proposed that the parties engage an independent auditing/accounting firm to independently confirm as much. **Exhibit G**. The Guild refused to engage in any substantive discussion of this reasonable proposal and thereby failed to comply with its legal obligation to meet and confer with the employer in good faith to resolve this matter.

On February 5, 2021, the Guild, for the first time, claimed that it required the specific subscriber numbers for Disney+ because such information was necessary and relevant for collective bargaining. See February 5, 2021 Email from Weiser to Stevelman, et al., attached as **Exhibit G**. In its further good faith efforts to engage in the interactive process, Respondents reiterated the offer to engage an independent auditing/accounting firm to independently confirm the applicable subscriber tier. The Guild ignored the offer and instead filed the instant Charge.

## 2. Legal Argument

### *a. The Guild's Demand For Exact Subscriber Numbers Is Not Relevant To Its Functions As Bargaining Representative*

#### *i. Applicable Legal Standard*

To obtain information under Section 8(a)(5) of the National Labor Relations Act, a union must demonstrate that the information is relevant and necessary to its performance of collective bargaining responsibilities. *NLRB v. A.S. Abell Co.*, 624 F.2d 506, 510 (4th Cir.1980). Information that directly pertains to wages, hours and working conditions of statutory employees within the bargaining unit is presumptively relevant. However, other information is not entitled to such a presumption. *Id.* Accordingly, when a union demands information other than information pertaining to bargaining unit employees, the union bears the burden of establishing

its relevance. *See Walter N. Yoder & Sons, Inc. v. NLRB*, 754 F.2d 531, 535 (4th Cir.1985); *A.S. Abell, supra*, 624 F.2d at 510. A union must also provide facts that support its assertion of relevance and need. *See Rice Growers Ass'n of California, Inc.*, 312 N.L.R.B. 837, 838 (1993).

ii. Exact Domestic Subscriber Numbers Do Not Pertain to Wages or Other Mandatory Subjects, and Therefore Are Not Presumptively Relevant

As a preliminary matter, exact domestic subscriber numbers do not pertain to mandatory subjects of bargaining and, as such, are not presumptively relevant. As explained above, the wage rates and other terms and conditions of employment (including residuals) on New Media productions are directly determined by domestic subscriber ranges and resulting tiers, *not* the exact subscriber numbers falling within them, which are immaterial. At best, exact subscriber data is analogous to financial information reflecting the performance of the online platforms. An employer is not required to provide such financial information absent the employer “pleading poverty” or otherwise basing its negotiation position on financial difficulties. *NLRB v. Truitt Manufacturing Co.*, 351 U.S. 149 (1956); *Steelworkers Local 14534 v. NLRB*, 983 F. 2d 240 (D.C. Cir. 1993). Here, the information is even more remote from mandatory subjects of bargaining because it does not relate to the signatory companies, Respondents, but rather to streaming services that are independently operated. Further, Respondents have not pled poverty or otherwise based any bargaining position on the operational performance or health of Disney+. Accordingly, it falls to the Guild to establish the relevance of the information it seeks.

iii. Exact Domestic Subscriber Numbers Are Not Necessary to the Guild’s Discharge of Its Representative Duties

In this case, the Guild has maintained since making its information Requests that it requires the exact domestic subscriber numbers in order to enforce the wage and residuals provisions of the existing MBA. Approximately two weeks before filing the current Board charge, the Guild, for the first time, alleged that it requires such information for the purpose of formulating new bargaining proposals. There are critical flaws with both of these arguments.

**First**, exact domestic subscriber numbers are not necessary for purposes of ensuring compliance with the MBA because, as explained above, the MBA concerns itself with subscriber tiers, not exact numbers. If, for some reason, the Guild disputed or doubted that Disney+ fell within subscriber tier 4, as Respondents represented, the Guild could rely on Respondents’ offer to engage an independent auditor to confirm as much or, for that matter, take the issue to arbitration after discussions between the parties. In this case, the Guild refused to engage in discussions to identify any ways that would provide verification of Disney+’s domestic subscriber levels which did not involve the Guild itself receiving the underlying confidential data. And the Guild certainly never invoked the arbitration procedure.

**Second**, the Guild cannot show that it needs exact domestic subscriber numbers in order to be able to formulate bargaining proposals. As described above, the Guild’s requests came almost immediately upon the completion of lengthy negotiations between the parties for a successor agreement. While the Guild asserts that it requires these numbers in order to assess subscriber

“trends” and determine what proposals it might want to advance concerning subscriber tiers, the Guild agreed to subscriber tiers through May 2023 *without* having had the benefit of these specific numbers and after its bargaining proposal to include in the MBA a requirement for periodic disclosure of the numbers was rejected and subsequently withdrawn. Indeed, the Guild seemingly has been able to fully evaluate its position on and ascribe value to subscriber ranges and resulting tiers since they were first described more than seven years ago in the 2014 New Media Sideletter in the WGA Basic Agreement. Moreover, “trends” are just as easily reflected by streaming platforms’ representations as to their subscriber ranges and the numbers of platforms falling within each range, year over year.

For these reasons, the Guild’s assertions of bargaining relevance are similar to those repeatedly rejected by the Board. As the Board has recognized, “[t]o say simply that information is needed for bargaining, or to implement contractual provisions, does not necessarily establish that the Act compels its production.”) *F.A. Barlett Tree Expert Co.*, 316 NLRB 1312, 1312-13 (1995). In this regard, the Guild’s position is no different from the unconvincing position advanced by the union in *F.A. Barlett*, 316 NLRB at 1312. There, the union requested that the employer supply its contracts with different utility companies, which laid out the terms of various projects on which the employees worked. *F.A. Barlett*, 316 NLRB at 1312. The employer had taken the position that it could not pay all employees working on the projects the same wage rate, as the utilities contracts contained different conditions, making some projects more profitable than others. *Id.* The union argued that it needed to see the contracts in order to formulate meaningful wage proposals. *Id.* at 1312-13. Although the contracts’ potential relationship to wages was much more direct than anything the Guild advances here, the Board disagreed. *Id.* In doing so, the Board explained that because the information requested (copies of the contracts) did not directly concern wages, it was not presumptively relevant. *Id.* As such, it was the union’s burden to demonstrate relevance. *Id.* And the union’s explanation, “that the information contained in the contracts [wa]s necessary to make a reasonable wage proposal[,] [wa]s nothing more than another way of saying that [the union] needed to bargain intelligently.” *Id.* (internal quotation marks and citations omitted). “This general claim,” the Board concluded, “[wa]s simply insufficient to establish relevance.” *Id.* See also *Disneyland Park*, 350 NLRB at 1258 (employer not required to disclose third party subcontractor agreements simply because the collective bargaining agreement contained provisions pertaining to subcontracting; “[i]n order to show the relevance of an information request, a union must do more than cite a provision of the collective-bargaining agreement.”). The Region ought to reach the same conclusion here.

Lastly, the Region should reject the Guild’s assertion that it needs exact subscriber numbers for purposes of collective bargaining pursuant to Board determinations that make clear a union cannot establish a bargaining need for requested information where there are no ongoing or pending negotiations to speak of. In *Ethicon, A Johnson & Johnson Co.*, 360 NLRB 827 (2014), for example, the union requested certain information concerning subcontracting and attempted to justify its request in through the same pretextual argument that the Guild advances here – namely, that the union needed the information in order to “put together a comprehensive plan for negotiating with the [c]ompany during bargaining.” *Id.* at 833. The Board found the argument to be meritless given that “at the time of the information request . . . there were no ongoing contract negotiations,” “the parties[’] collective-bargaining agreement would not expire for an



additional 2 years . . . ,” and [t]here was no showing that contract negotiations were even likely to occur anytime in the near future.” *Id.* These are precisely the circumstances here, with the MBA having just been extended through 2023 and with no likelihood of negotiations occurring in the near future. Indeed, the Division of Advice just rejected the Guild’s purported collective bargaining need for information for highly similar reasons and under very comparable circumstances, in a separate set of charges before this Region, which the Guild ultimately withdrew. *See* March 2, 2020 Email from (b) (6), (b) (7)(C), Attorney for the Division of Advice (“Division”) of the National Labor Relations Board to Brian Gee, Regional Attorney, NLRB Region 31, attached as **Exhibit I**.<sup>5</sup> The same result should ensue here.

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In sum, even if Respondents possessed or controlled Disney+ exact subscriber numbers (which they do not), the Guild has failed to meet the test of relevance set forth in the *A.S. Abell* line of cases.

iv. Numbers of Subscribers Acquired through Third-Party Partnerships or During Free Trial Periods Are Likewise Unnecessary to the Guild’s Discharge of Its Representative Duties

The same conclusions regarding relevance apply to the free trial period and third-party partnership subscriber information requested by the Guild. There is no reference to such items in any MBA provision addressing Respondents’ obligations with respect to their employment of writers, and third-party transactions do not, in any way, factor into the bargaining relationship between Respondents and the Guild or any of the obligations imposed by the parties’ Agreement. In spite of this, however, and as described above, Respondents verbally provided fully responsive information to the Guild concerning these items. As such, the items are not at issue even if the Guild could establish their relevance, which it cannot.

***b. The Guild’s Information Requests Fail To Meet The Detroit Edison Balancing Test***

Finally, the Guild’s Requests implicate information of a highly confidential and proprietary nature. Disney+’s domestic subscription base has never been publicly disclosed by the online platform, which has chosen instead to report total global subscriber numbers. Disclosure of domestic numbers alone would reveal sensitive information about the platform’s growth strategy and appeal within a very specific geographic region, which, in turn, could undercut its competitive advantages, influence demand for the streaming service and potentially impact overall revenues and stock price.

In fact, we are informed that access to this Disney+ domestic subscriber data is limited to employees with a specific “need-to-know” that information and moreover subjects those

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<sup>5</sup> The guidance issued by the Division of Advice pertained to Charges 31-CA-243392, 31-CA-243406 and 31-CA-243449, among others. Respondents obtained this guidance pursuant to a Freedom of Information Act request.

employees to the Disney “Insider Trading Compliance Program.” *See* The Walt Disney Company and Associated Companies Insider Trading Compliance Program, attached as **Exhibit J**. Because domestic subscriber data for the Disney+ platform is non-public information that may affect Disney’s stock price, the company places strict limits on any dissemination of that information and further places strict limits on the employees who receive that information.<sup>6</sup> These facts clearly satisfy Respondents’ obligation to show that the data sought by the Guild in this case is confidential business information.

Accordingly, the balancing test set forth by the Board in *Detroit Edison v. N.L.R.B.*, 440 U.S. 301 (1978) applies. Pursuant to this test, it becomes “incumbent upon the [u]nion to demonstrate that its need for . . . materials outweigh[s] the [employer]’s interest in maintaining the confidentiality of the records.” *E. Tennessee Baptist Hosp. v. N.L.R.B.*, 6 F.3d 1139, 1141 (6th Cir. 1993); *see also U.S. Postal Serv.*, 305 NLRB 997 (1991) (employer interest in maintaining informant confidentiality greater than union’s need for relevant information); *GTE California*, 324 NLRB 424 (1997) (employer that declined to provide customer identifying information requested by the union sufficiently satisfied its obligation to furnish relevant information where it permitted union to understand customer concern through other means).

As shown above, the Guild’s need for exact subscriber numbers is not supported by its interest in enforcing the existing MBA because the subscriber tiers are amply sufficient to ensure that Respondents are paying writers and wages and benefits called for under the agreement, and Respondents have put forward an abundantly reasonable proposal for validating the accuracy of those tiers, should the Guild wish to do so. Moreover, the Guild’s purported need for exact subscriber information is not supported by its interest in developing new contract proposals because, first, exact subscriber information does not relate to a mandatory subject of bargaining; and second, there are no pending negotiations and the existing collective bargaining agreement does not expire until 2023. *See Ethicon, supra*, 360 NLRB at 833.

In short, Respondents’ legitimate and compelling confidentiality concerns outweigh whatever marginal relevance the Guild ascribes to that information. And when Respondents tried to offer reasonable alternatives to the Guild to mitigate these confidentiality concerns (including an offer to have a certified public account verify the Disney+ tier status), the Guild did not even offer a substantive response. Accordingly, Respondents have fully complied with their duty to bargain in good faith. It is the Guild that has failed to satisfy its obligation to bargain in good faith with Respondents about reasonable alternatives to its intrusive demands.

### **3. Conclusion**

For all these reasons, Respondents respectfully urge the Region to dismiss this unfounded Charge without delay. Should the Region have any further questions or need clarification, please do not hesitate to contact us.

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<sup>6</sup> The Guild’s vague promise to keep this sensitive information “confidential” does not come close to these legal safeguards.



Marissa Dagdagan  
May 12, 2021  
Page 10

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Sincerely,

/s/ Mark A. Wasserman  
Mark A. Wasserman  
A Professional Corporation of  
Mitchell Silberberg & Knupp LLP

13153278.5



# **EXHIBIT D**



# WRITERS GUILD OF AMERICA WEST

CONTRACTS DEPARTMENT

PH 323.782.4501 FAX 323.782.4707

August 27, 2020

VIA EMAIL & U.S. MAIL

(b) (6), (b) (7)(C)

The Walt Disney Company  
500 S Buena Vista St.  
Burbank, CA 91521  
[REDACTED]

## RE: Information Request Regarding Subscriber Totals

Dear (b) (6), (b) (7)(C):

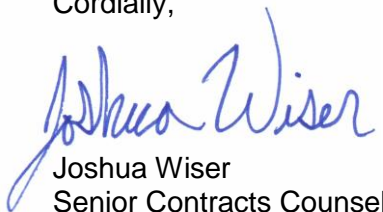
The following information request is served on Twentieth Century Fox Film Corp., and Walt Disney Pictures pursuant to the statutory right of the Writers Guild of America to information under sections 8(a)(5) and 8(d) of the National Labor Relations Act (29 U.S.C. § 151 et seq.) and the 2014, 2017, and 2020 Writers Guild of America Theatrical and Television Basic Agreements (collectively, "MBA").

Please provide the Guild, via U.S. mail and email to [jwiser@wga.org](mailto:jwiser@wga.org), with the following information no later than the close of business on September 30, 2020:

- The number of paid domestic (U.S. and Canada) subscribers to the Disney+ consumer pay service ("Disney+") as of July 1, 2020;
- The number of domestic (U.S. and Canada) subscribers with access to Disney+ during a "free trial period" of more than 30 days;
- The number of domestic (U.S. and Canada) subscribers with access to Disney+ during a "free trial period" of 30 days or less; and
- The number of paid domestic (U.S. and Canada) subscribers to Disney+ acquired through a partnership with a third-party, if any.

Please do not hesitate to contact me if you have any questions. The Guild is willing, of course, to discuss appropriate confidentiality measures.

Cordially,



Joshua Wisner  
Senior Contracts Counsel

7000 WEST THIRD STREET, LOS ANGELES, CA 90048 PH 323. 951. 4000 FAX 323. 782. 4800 [www.wga.org](http://www.wga.org)

AFFILIATED WITH: WRITERS GUILD OF AMERICA EAST LA GUILDE DES SCÉNARISTES FRANÇAISE NEW ZEALAND WRITERS GUILD SCREENWRITERS ASSOCIATION INDIA  
SCRIPTWRITERS GUILD OF ISRAEL SOCIÉTÉ DES AUTEURS DE RADIO, TÉLÉVISION ET CINÉMA VERBAND DEUTSCHER DREHBUCHAUTOREN WRITERS GUILD OF CANADA  
WRITERS' GUILD OF GREAT BRITAIN WRITERS GUILD OF IRELAND WRITERS' GUILD OF SOUTH AFRICA

# **EXHIBIT E**



# WRITERS GUILD OF AMERICA WEST

CONTRACTS DEPARTMENT

PH 323.782.4501 FAX 323.782.4707

August 27, 2020

VIA EMAIL & U.S. MAIL

(b) (6), (b) (7)(C)

Relentless Productions  
2500 Broadway, 2nd Fl  
Santa Monica, CA 90404

## RE: Information Request Regarding Subscriber Totals

Dear (b) (6), (b) (7)(C):

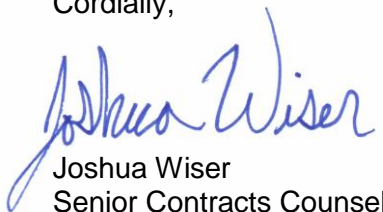
The following information request is served on Relentless Productions pursuant to the statutory right of the Writers Guild of America to information under sections 8(a)(5) and 8(d) of the National Labor Relations Act (29 U.S.C. § 151 et seq.) and the 2014, 2017, and 2020 Writers Guild of America Theatrical and Television Basic Agreements (collectively, "MBA").

Please provide the Guild, via U.S. mail and email to [jwiser@wga.org](mailto:jwiser@wga.org), with the following information no later than the close of business on September 30, 2020:

- The number of paid domestic (U.S. and Canada) subscribers to the Hulu consumer pay service ("Hulu") as of July 1, 2020;
- The number of domestic (U.S. and Canada) subscribers with access to Hulu during a "free trial period" of more than 30 days;
- The number of domestic (U.S. and Canada) subscribers with access to Hulu during a "free trial period" of 30 days or less; and
- The number of paid domestic (U.S. and Canada) subscribers to Hulu acquired through a partnership with a third-party, if any.

Please do not hesitate to contact me if you have any questions. The Guild is willing, of course, to discuss appropriate confidentiality measures.

Cordially,



Joshua Wiser  
Senior Contracts Counsel

7000 WEST THIRD STREET, LOS ANGELES, CA 90048 PH 323. 951. 4000 FAX 323. 782. 4800 [www.wga.org](http://www.wga.org)

AFFILIATED WITH: WRITERS GUILD OF AMERICA EAST LA GUILDE DES SCÉNARISTES FRANÇAISE NEW ZEALAND WRITERS GUILD SCREENWRITERS ASSOCIATION INDIA  
SCRIPTWRITERS GUILD OF ISRAEL SOCIÉTÉ DES AUTEURS DE RADIO, TÉLÉVISION ET CINÉMA VERBAND DEUTSCHER DREHBUCHAUTOREN WRITERS GUILD OF CANADA  
WRITERS' GUILD OF GREAT BRITAIN WRITERS GUILD OF IRELAND WRITERS' GUILD OF SOUTH AFRICA

# **EXHIBIT F**

**From:** Joshua Wiser [REDACTED]  
**Sent:** Tuesday, December 15, 2020 4:47 PM  
**To:** Stevelman, Seth A. [REDACTED]  
**Cc:** Stubington, Mark [REDACTED]  
**Subject:** Demand for Domestic Subscribers as of July 1, 2020 for Disney+ and Hulu

Dear Mr. Stevelman:

On August 27, 2020, the Guild sent the attached information requests asking for the number of domestic subscribers for Hulu and Disney+ as of July 1, 2020. To date, the Company has failed to provide this information and has only offered that both services are within the tier of 20 million to 45 million subscribers, without substantiation.

The Guild is entitled to information that is "necessary and relevant" to its representation duties. (*NLRB v. ACME Industrial Co.*, 385 U.S. 432, 436 (1967)). The information is necessary to enforce the collective bargaining agreement as the number of subscribers to a streaming platform determines both initial compensation and residuals for high-budget original SVOD programs.

Without the requested information, the Guild cannot pursue an enforcement action against a particular company that is not in compliance with the MBA. Moreover, because the subscriber information impacts wages (both initial compensation and residuals), it is a mandatory subject of bargaining and is presumptively relevant to the Guild. Such information is necessary for the Guild to adequately prepare for and engage in collective bargaining with the companies.

For several years, Hulu, through its signatory entity Relentless Productions, LLC, has, like many other companies, provided the Guild with the requested subscriber information. The Guild has maintained the confidentiality of this information and remains willing to enter into a reasonable confidentiality agreement regarding the 2020 subscriber information.

If the Company is unwilling to provide the requested information by January 8, 2021, the Guild will pursue its legal remedies.

This email does not constitute a full recitation of the facts or positions of the Guild. Nothing contained herein is intended as an admission of any fact or a waiver of any right, remedy or position of the Guild or of any individual writer, each and all of which are hereby expressly reserved.

Cordially,

Josh Wiser

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# **EXHIBIT G**



**From:** Stevelman, Seth A.  
**Sent:** Friday, February 12, 2021 12:54 PM  
**To:** Joshua Wiser [REDACTED]; Stubington, Mark [REDACTED]  
**Cc:** Melissa Arbiter [REDACTED]  
**Subject:** RE: Demand for Domestic Subscribers as of July 1, 2020 for Disney+ and Hulu

Dear Mr. Wiser:

This will supplement our previous communications with you (which include our January 21 and other telephone conversations) and the various written correspondence below regarding the above-referenced matter.

To date, the WGA has failed to provide to the Companies a rationale explaining the purpose for its request to obtain *the exact number of subscribers* for Disney+. As we have discussed with you previously on many occasions, the only data relating to Disney+ subscribers that in any way affects the terms and conditions of bargaining unit employees under the WGA MBA is the subscriber **range** – which we already have provided to you. More pointedly, the rates, terms and conditions (including residuals) of the WGA MBA are determined solely by subscription tiers. The exact subscriber numbers within those tiers are immaterial.

Further, contrary to the WGA's assertion, we have discussed with you a willingness to substantiate the subscriber tier information that we have provided to you. We remind you of our last offer stated in both our January 21 email below and during our conversation with you that if you have any reason to doubt the veracity of our representation, we will meet and confer with you to discuss ways to confirm the information. Despite that offer, the WGA continues to request access to the specific subscriber number, implying that if it receives that number, the WGA somehow will have confirmed the subscriber tier. Yet that argument ignores the simple fact that the companies already have provided to the WGA the exact subscriber tier information that it purports to seek and even if we provide you with a specific number of subscribers, you could still come back and question the veracity of the number.

All of this said and with the desire to more directly address the WGA's desire to confirm the subscriber tier information for Disney+, the Companies propose that the parties engage an independent auditing/accounting firm which will be directed to independently confirm the subscriber tiers at issue. Such an endeavor will provide the WGA with confirmation of the veracity of information that it has been provided in this matter. Please let us know if the WGA is agreeable to this proposal and if not, please let us know why this does not work.

Finally, as it relates to Hulu, since Hulu does not have a foreign presence, the number that is publicly disclosed in the earnings reports is the number of domestic subscribers for Hulu. Note that while Hulu reports that number publicly, such information for such domestic subscribers is not reported publicly for Disney+ (which has a domestic and international presence). Such information is considered by Disney+ to be highly confidential and proprietary.

We look forward to your response.

Regards,

Mark and Seth

---

**From:** Joshua Wiser [REDACTED]  
**Sent:** Friday, February 5, 2021 8:47 AM  
**To:** Stevelman, Seth A. [REDACTED]; Stubington, Mark [REDACTED]  
**Cc:** Melissa Arbiter [REDACTED]  
**Subject:** RE: Demand for Domestic Subscribers as of July 1, 2020 for Disney+ and Hulu

Dear Mr. Stevelman:

I'm writing in reference to the Guild's August 27, 2020 information requests in which we asked for the number of domestic subscribers for Hulu and Disney+ as of July 1, 2020. To date, the Company has failed to provide this information and has only offered that both services are within the tier of 20 million to 45 million subscribers, without substantiation.

This specific information is critical to the Guild. Initial compensation and residual compensation for high budget SVOD programs is based on the number of domestic subscribers to the streaming platform in the United States and Canada as of July 1, 2020 under Paragraph 4.e.(2)(c) of the New Media Sideletter of the MBA. Disney claims, but refuses to substantiate, that both Disney+ and Hulu have less than 45 million subscribers. Disney's public financial disclosures indicate Disney+ may have more than 45 million domestic subscribers. The Guild has repeatedly requested this necessary and relevant information to carry out its enforcement and collective bargaining duties.

Specific subscriber information is "necessary and relevant" to the Guild's bargaining duties, both in terms of enforcement and collective bargaining. *NLRB v. ACME Industrial Co.*, 385 U.S. 432, 436 (1967); *see also Press Democrat Pub. Co. v. NLRB*, 629 F.2d 1320, 1324 (9th Cir. 1980) (holding mandatory subjects of bargaining "pertaining to wages, hours or conditions of employment, is presumptively relevant, and must be disclosed unless the employer proves a lack of relevance"). The subscriber-tier levels are subject to negotiations every three years and the Guild must understand actual subscriber trends. Changes to the tier thresholds were negotiated as part of the 2014 and 2017 MBAs. It is necessary that the Guild understand the specific subscriber totals for each SVOD service so it can adequately prepare for negotiations where either party may propose changes to the subscriber tiers.

The specific subscriber numbers are also necessary and relevant for purposes of enforcement. The Guild has a right to basic information such as subscriber totals to confirm that writers are properly compensated. The MBA provides a specific definition of subscriber that can only be confirmed by the Company providing the appropriate subscriber numbers.

As signatory employers, Relentless Productions, Twentieth Century Fox Film Corp., and Walt Disney Pictures have an obligation to take reasonable and necessary steps to obtain information from third parties that is necessary and relevant to the Guild's bargaining duties. *In Re Int'l Protective Servs., Inc.*, 339 NLRB 701, 705 (2003) (holding "an employer has a duty to supply relevant requested information which may not be in its possession, but where the information likely can be obtained from a third party with whom the employer has a business relationship"); *see also W. Penn Power Co. v. NLRB*, 394 F.3d 233, 245 (4th Cir. 2005) (holding an employer has an "affirmative obligation to make reasonable efforts to obtain [from its parent] relevant information ... needed by the Union to police the collective bargaining agreement").

In response to the Guild's prior requests for information regarding monthly subscriber numbers relevant to the 2014 MBA and annual subscriber numbers in 2018 and 2019, Relentless Productions put the Guild in direct contact with Hulu employees who provided the specific number of subscribers, not the mere range that Disney is offering now. Relentless Productions is part of the Disney corporation, which is the majority owner of Hulu and Disney+, and Disney publicly reports subscriber totals to shareholders. Relentless Productions, Twentieth Century Fox Film Corp., and Walt Disney Pictures have an obligation to obtain subscriber information from within its parent corporation and a practice exists for doing precisely that for Hulu.

The Guild stands ready to meet and confer to address any legitimate confidentially concerns, and has attached the Confidentiality Agreement we've previously entered into with Hulu slightly modified and tracked in redline to include Disney+. However, in the event the Company fails to provide the requested subscriber numbers for Disney+ and Hulu by the close of business on Friday, February 12th, the Guild intends to file a charge.

Cordially,

Josh

JOSHUA WISER | SENIOR CONTRACTS COUNSEL | WRITERS GUILD OF AMERICA WEST | 7000 W. 3RD ST., LOS ANGELES, CA 90048 | [REDACTED] | WGAw

**From:** Stevelman, Seth A. <[REDACTED]>  
**Sent:** Thursday, January 21, 2021 1:42 PM  
**To:** Joshua Wiser <[REDACTED]>  
**Cc:** Stubington, Mark <[REDACTED]>  
**Subject:** RE: Demand for Domestic Subscribers as of July 1, 2020 for Disney+ and Hulu

Dear Mr. Wiser:

This is in response to your email of December 15, 2020 relating to your request for specific subscriber information for both Hulu and Disney+. For your information, these are online platforms that are not themselves employers of bargaining unit employees.

As a foundational matter, we as signatory employers do not possess the specific subscriber information that you are demanding. Rather, that highly sensitive business information is controlled by the online platforms themselves that have not voluntarily provided that information to this company. *Howe K. Sipes Co.*, 319 N.L.R.B. 30, 38 (1995) (“[A]n employer can be expected to supply only that information which it actually possesses or it can reasonably acquire. There is no requirement that, in response to a request for information, an employer conduct independent cost studies or analysis”); *Korn Indus., Inc. v. NLRB*, 389 F.2d 117, 123 (4th Cir.1967) (same).

As you may recall, Mark Stubington and I discussed this matter with you in early October and based on information that the signatory employers possessed at that time, we informed you that the number of domestic subscribers for both Hulu and Disney+ fell within the range of 20 million to 45 million. This information about the subscriber range (which continues to be accurate), rather than any specific number within that range, is the only data that in any way affects the terms and conditions of bargaining unit employees. Specifically, the CBA sets certain wages and benefits to several different ranges of domestic subscribers. The CBA does not set wages and benefits to the specific numbers of subscribers within those ranges and accordingly that specific number is entirely irrelevant to the bargaining relationship between our respective companies, as signatory employers, and the Guild. In fact, during the recent industry negotiations, the WGA accepted this concept from other SVOD platforms, such as Amazon Prime, Peacock, Apple TV+ and HBO Max, that only a subscriber range – and not the specific number of subscribers – was relevant. When we provided you with this information in October, you said you would review it and get back to us with any follow-up – which led to your December 15, 2020 email.

In cases like this one, where the union’s request for information pertains to matters outside of the bargaining unit, the union bears the burden of establishing its relevance. *See Walter N. Yoder & Sons, Inc. v. NLRB*, 754 F.2d 531, 535 (4th Cir.1985); *A.S. Abell, supra*, 624 F.2d at 510. A union must also provide facts that support its assertion of relevance and need. *See Rice Growers Ass’n of California, Inc.*, 312 N.L.R.B. 837, 838 (1993). The union has not established such facts in this matter.

If you have any reason to doubt the veracity of the subscriber ranges for both Hulu and Disney+, we hereby offer to meet and confer with you to discuss reasonable methods to confirm that information, which is highly confidential and proprietary to the online platforms. *Detroit Edison v. N.L.R.B.*, 440 U.S. 301 (1978).

Regards,

Mark and Seth

---

**From:** Joshua Wiser [REDACTED]  
**Sent:** Tuesday, December 15, 2020 4:47 PM  
**To:** Stevelman, Seth A. [REDACTED]  
**Cc:** Stubington, Mark [REDACTED]  
**Subject:** Demand for Domestic Subscribers as of July 1, 2020 for Disney+ and Hulu

Dear Mr. Stevelman:

On August 27, 2020, the Guild sent the attached information requests asking for the number of domestic subscribers for Hulu and Disney+ as of July 1, 2020. To date, the Company has failed to provide this information and has only offered that both services are within the tier of 20 million to 45 million subscribers, without substantiation.

The Guild is entitled to information that is "necessary and relevant" to its representation duties. (*NLRB v. ACME Industrial Co.*, 385 U.S. 432, 436 (1967)). The information is necessary to enforce the collective bargaining agreement as the number of subscribers to a streaming platform determines both initial compensation and residuals for high-budget original SVOD programs.

Without the requested information, the Guild cannot pursue an enforcement action against a particular company that is not in compliance with the MBA. Moreover, because the subscriber information impacts wages (both initial compensation and residuals), it is a mandatory subject of bargaining and is presumptively relevant to the Guild. Such information is necessary for the Guild to adequately prepare for and engage in collective bargaining with the companies.

For several years, Hulu, through its signatory entity Relentless Productions, LLC, has, like many other companies, provided the Guild with the requested subscriber information. The Guild has maintained the confidentiality of this information and remains willing to enter into a reasonable confidentiality agreement regarding the 2020 subscriber information.

If the Company is unwilling to provide the requested information by January 8, 2021, the Guild will pursue its legal remedies.

This email does not constitute a full recitation of the facts or positions of the Guild. Nothing contained herein is intended as an admission of any fact or a waiver of any right, remedy or position of the Guild or of any individual writer, each and all of which are hereby expressly reserved.

Cordially,

Josh Wiser

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JOSHUA WISER | SENIOR CONTRACTS COUNSEL | WRITERS GUILD OF AMERICA WEST | 7000 W. 3RD ST., LOS ANGELES, CA 90048 | [REDACTED] | [WGAw](#)

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notify the Writers Guild of America, West, immediately by reply e-mail or telephone, and delete the original message and all attachments from your system. Thank you

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# **EXHIBIT H**

**From:** [Joshua Wiser](#)  
**To:** [Stevelman, Seth A.](#); [Stubington, Mark](#)  
**Cc:** [Melissa Arbiter](#)  
**Subject:** RE: Demand for Domestic Subscribers as of July 1, 2020 for Disney+ and Hulu  
**Date:** Friday, February 19, 2021 3:27:02 PM

---

Seth:

As we have said repeatedly in prior correspondences, specific subscriber numbers are "necessary and relevant" to the Guild's bargaining duties, both in terms of enforcement and collective bargaining. The language in the CBA states "[t]he number of domestic subscribers shall be determined as of July 1st of each year" for the purposes of determining initial compensation and residuals. Without the number, the Guild cannot determine whether the subscriber tier is correct, which is required to carry out our essential enforcement duties. Similarly, as we have previously explained, the subscriber-tier levels are subject to negotiations every three years and the Guild must have access to specific subscriber numbers in order to understand subscriber trends. It is necessary that the Guild understand the specific subscriber totals for each SVOD service so it can adequately prepare for negotiations where either party may propose changes to the subscriber tiers.

Moreover, the offer to provide the subscriber numbers for Disney+ and Hulu to a third-party accounting firm is unacceptable as it continues to deprive the Guild of this specific information that is relevant and necessary to the Guild's bargaining duties. Your ability to share this information with a third-party demonstrates that you can share it confidentially with the Guild, which has been the practice for Hulu for several years.

Further, Disney's public disclosures do not use the MBA definition of subscribers, which substantiates our need for specific subscriber numbers.

We are promptly moving forward with filing a charge as we've met and conferred for weeks without any change in the Company's position.

Thank you for your attention to this matter.

Cordially,

Josh

JOSHUA WISER | SENIOR CONTRACTS COUNSEL | WRITERS GUILD OF AMERICA WEST | 7000 W. 3RD ST., LOS ANGELES, CA 90048 | [REDACTED] |



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**From:** Stevelman, Seth A. [REDACTED] >  
**Sent:** Friday, February 12, 2021 12:54 PM  
**To:** Joshua Wiser [REDACTED] >; Stubington, Mark [REDACTED] >  
**Cc:** Melissa Arbiter [REDACTED] >  
**Subject:** RE: Demand for Domestic Subscribers as of July 1, 2020 for Disney+ and Hulu

Dear Mr. Wiser:

This will supplement our previous communications with you (which include our January 21 and other telephone conversations) and the various written correspondence below regarding the above-referenced matter.

To date, the WGA has failed to provide to the Companies a rationale explaining the purpose for its request to obtain *the exact number of subscribers* for Disney+. As we have discussed with you previously on many occasions, the only data relating to Disney+ subscribers that in any way affects the terms and conditions of bargaining unit employees under the WGA MBA is the subscriber **range** – which we already have provided to you. More pointedly, the rates, terms and conditions (including residuals) of the WGA MBA are determined solely by subscription tiers. The exact subscriber numbers within those tiers are immaterial.

Further, contrary to the WGA's assertion, we have discussed with you a willingness to substantiate the subscriber tier information that we have provided to you. We remind you of our last offer stated in both our January 21 email below and during our conversation with you that if you have any reason to doubt the veracity of our representation, we will meet and confer with you to discuss ways to confirm the information. Despite that offer, the WGA continues to request access to the specific subscriber number, implying that if it receives that number, the WGA somehow will have confirmed the subscriber tier. Yet that argument ignores the simple fact that the companies already have provided to the WGA the exact subscriber tier information that it purports to seek and even if we provide you with a specific number of subscribers, you could still come back and question the veracity of the number.

All of this said and with the desire to more directly address the WGA's desire to confirm the subscriber tier information for Disney+, the Companies propose that the parties engage an independent auditing/accounting firm which will be directed to independently confirm the subscriber tiers at issue. Such an endeavor will provide the WGA with confirmation of the veracity of information that it has been provided in this matter. Please let us know if the WGA is agreeable to this proposal and if not, please let us know why this does not work.

Finally, as it relates to Hulu, since Hulu does not have a foreign presence, the number that is publicly disclosed in the earnings reports is the number of domestic subscribers for Hulu.

Note that while Hulu reports that number publicly, such information for such domestic subscribers is not reported publicly for Disney+ (which has a domestic and international presence). Such information is considered by Disney+ to be highly confidential and proprietary.

We look forward to your response.

Regards,

Mark and Seth

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**From:** Joshua Wiser [REDACTED]

**Sent:** Friday, February 5, 2021 8:47 AM



**To:** Stevelman, Seth A. <[REDACTED]>; Stubington, Mark

<[REDACTED]>

**Cc:** Melissa Arbiter <[REDACTED]>

**Subject:** RE: Demand for Domestic Subscribers as of July 1, 2020 for Disney+ and Hulu

Dear Mr. Stevelman:

I'm writing in reference to the Guild's August 27, 2020 information requests in which we asked for the number of domestic subscribers for Hulu and Disney+ as of July 1, 2020. To date, the Company has failed to provide this information and has only offered that both services are within the tier of 20 million to 45 million subscribers, without substantiation.

This specific information is critical to the Guild. Initial compensation and residual compensation for high budget SVOD programs is based on the number of domestic subscribers to the streaming platform in the United States and Canada as of July 1, 2020 under Paragraph 4.e.(2)(c) of the New Media Sideletter of the MBA. Disney claims, but refuses to substantiate, that both Disney+ and Hulu have less than 45 million subscribers. Disney's public financial disclosures indicate Disney+ may have more than 45 million domestic subscribers. The Guild has repeatedly requested this necessary and relevant information to carry out its enforcement and collective bargaining duties.

Specific subscriber information is "necessary and relevant" to the Guild's bargaining duties, both in terms of enforcement and collective bargaining. *NLRB v. ACME Industrial Co.*, 385 U.S. 432, 436 (1967); *see also Press Democrat Pub. Co. v. NLRB*, 629 F.2d 1320, 1324 (9th Cir. 1980) (holding mandatory subjects of bargaining "pertaining to wages, hours or conditions of employment, is presumptively relevant, and must be disclosed unless the employer proves a lack of relevance"). The subscriber-tier levels are subject to negotiations every three years and the Guild must understand actual subscriber trends. Changes to the tier thresholds were negotiated as part of the 2014 and 2017 MBAs. It is necessary that the Guild understand the specific subscriber totals for each SVOD service so it can adequately prepare for negotiations where either party may propose changes to the subscriber tiers.

The specific subscriber numbers are also necessary and relevant for purposes of enforcement. The Guild has a right to basic information such as subscriber totals to confirm that writers are properly compensated. The MBA provides a specific definition of subscriber that can only be confirmed by the Company providing the appropriate subscriber numbers.

As signatory employers, Relentless Productions, Twentieth Century Fox Film Corp., and Walt Disney Pictures have an obligation to take reasonable and necessary steps to obtain information from third parties that is necessary and relevant to the Guild's bargaining duties. *In Re Int'l Protective Servs., Inc.*, 339 NLRB 701, 705 (2003) (holding "an employer has a duty to supply relevant requested information which may not be in its possession, but where the information likely can be obtained from a third party with whom the employer has a business relationship"); *see also W. Penn Power Co. v. NLRB*, 394 F.3d 233, 245 (4th Cir. 2005) (holding an employer has an "affirmative obligation to make reasonable efforts to obtain [from its parent] relevant information ... needed by the Union to police the collective bargaining agreement").

In response to the Guild's prior requests for information regarding monthly subscriber numbers relevant to the 2014 MBA and annual subscriber numbers in 2018 and 2019, Relentless Productions put the Guild in direct contact with Hulu employees who provided the specific number of subscribers, not the mere range that Disney is offering now. Relentless Productions is part of the Disney corporation, which is the majority owner of Hulu and Disney+, and Disney publicly reports subscriber totals to shareholders. Relentless Productions, Twentieth Century Fox Film Corp., and Walt Disney Pictures have an obligation to obtain subscriber information from within its parent corporation and a practice exists for doing precisely that for Hulu.

The Guild stands ready to meet and confer to address any legitimate confidentiality concerns, and has attached the Confidentiality Agreement we've previously entered into with Hulu slightly modified and tracked in redline to include Disney+. However, in the event the Company fails to provide the requested subscriber numbers for Disney+ and Hulu by the close of business on Friday, February 12th, the Guild intends to file a charge.

Cordially,

Josh

JOSHUA WISER | SENIOR CONTRACTS COUNSEL | WRITERS GUILD OF AMERICA WEST | 7000 W. 3RD ST., LOS ANGELES, CA 90048 | [REDACTED] |  
WGA<sub>W</sub>

**From:** Stevelman, Seth A. <[REDACTED]>  
**Sent:** Thursday, January 21, 2021 1:42 PM  
**To:** Joshua Wiser <[REDACTED]>  
**Cc:** Stubington, Mark <[REDACTED]>  
**Subject:** RE: Demand for Domestic Subscribers as of July 1, 2020 for Disney+ and Hulu

Dear Mr. Wiser:

This is in response to your email of December 15, 2020 relating to your request for specific subscriber information for both Hulu and Disney+. For your information, these are online platforms that are not themselves employers of bargaining unit employees.

As a foundational matter, we as signatory employers do not possess the specific subscriber information that you are demanding. Rather, that highly sensitive business information is controlled by the online platforms themselves that have not voluntarily provided that information to this company. *Howe K. Sipes Co.*, 319 N.L.R.B. 30, 38 (1995) (“[A]n employer can be expected to supply only that information which it actually possesses or it can reasonably acquire. There is no requirement that, in response to a request for information, an employer conduct independent cost studies or analysis”); *Korn Indus., Inc. v. NLRB*, 389 F.2d 117, 123 (4th Cir.1967) (same).

As you may recall, Mark Stubington and I discussed this matter with you in early October and based on information that the signatory employers possessed at that time, we informed you that the number of domestic subscribers for both Hulu and Disney+ fell within the range of 20

million to 45 million. This information about the subscriber range (which continues to be accurate), rather than any specific number within that range, is the only data that in any way affects the terms and conditions of bargaining unit employees. Specifically, the CBA sets certain wages and benefits to several different ranges of domestic subscribers. The CBA does not set wages and benefits to the specific numbers of subscribers within those ranges and accordingly that specific number is entirely irrelevant to the bargaining relationship between our respective companies, as signatory employers, and the Guild. In fact, during the recent industry negotiations, the WGA accepted this concept from other SVOD platforms, such as Amazon Prime, Peacock, Apple TV+ and HBO Max, that only a subscriber range – and not the specific number of subscribers – was relevant. When we provided you with this information in October, you said you would review it and get back to us with any follow-up – which led to your December 15, 2020 email.

In cases like this one, where the union's request for information pertains to matters outside of the bargaining unit, the union bears the burden of establishing its relevance. *See Walter N. Yoder & Sons, Inc. v. NLRB*, 754 F.2d 531, 535 (4th Cir.1985); *A.S. Abell, supra*, 624 F.2d at 510. A union must also provide facts that support its assertion of relevance and need. *See Rice Growers Ass'n of California, Inc.*, 312 N.L.R.B. 837, 838 (1993). The union has not established such facts in this matter.

If you have any reason to doubt the veracity of the subscriber ranges for both Hulu and Disney+, we hereby offer to meet and confer with you to discuss reasonable methods to confirm that information, which is highly confidential and proprietary to the online platforms. *Detroit Edison v. N.L.R.B.*, 440 U.S. 301 (1978).

Regards,

Mark and Seth

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**From:** Joshua Wiser [REDACTED]  
**Sent:** Tuesday, December 15, 2020 4:47 PM  
**To:** Stevelman, Seth A. <[REDACTED]>  
**Cc:** Stubington, Mark <[REDACTED]>  
**Subject:** Demand for Domestic Subscribers as of July 1, 2020 for Disney+ and Hulu

Dear Mr. Stevelman:

On August 27, 2020, the Guild sent the attached information requests asking for the number of domestic subscribers for Hulu and Disney+ as of July 1, 2020. To date, the Company has failed to provide this information and has only offered that both services are within the tier of 20 million to 45 million subscribers, without substantiation.

The Guild is entitled to information that is "necessary and relevant" to its representation duties. (*NLRB v. ACME Industrial Co.*, 385 U.S. 432, 436 (1967)). The information is necessary to enforce the collective bargaining agreement as the number of subscribers to a streaming platform determines both initial compensation and residuals for high-budget original SVOD programs.

Without the requested information, the Guild cannot pursue an enforcement action against a particular company that is not in compliance with the MBA. Moreover, because the subscriber information impacts wages (both initial compensation and residuals), it is a mandatory subject of bargaining and is presumptively relevant to the Guild. Such information is necessary for the Guild to adequately prepare for and engage in collective bargaining with the companies.

For several years, Hulu, through its signatory entity Relentless Productions, LLC, has, like many other companies, provided the Guild with the requested subscriber information. The Guild has maintained the confidentiality of this information and remains willing to enter into a reasonable confidentiality agreement regarding the 2020 subscriber information.

If the Company is unwilling to provide the requested information by January 8, 2021, the Guild will pursue its legal remedies.

This email does not constitute a full recitation of the facts or positions of the Guild. Nothing contained herein is intended as an admission of any fact or a waiver of any right, remedy or position of the Guild or of any individual writer, each and all of which are hereby expressly reserved.

Cordially,

Josh Wiser

JOSHUA WISER | SENIOR CONTRACTS COUNSEL | WRITERS GUILD OF AMERICA WEST | 7000 W. 3RD ST., LOS ANGELES, CA 90048 | [REDACTED] |  


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# **EXHIBIT I**

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**From:** (b) (6), (b) (7)(C)  
**Sent:** Monday, March 2, 2020 2:42 PM  
**To:** Gee, Brian; SM-Region 31, Los Angeles  
**Cc:** Bock, Richard; Szapiro, Miriam; Dodds, Amy L.; Compton, Kayce R.; Shorter, LaDonna; Kilpatrick, Elizabeth  
**Subject:** Bonanza Productions Inc., 31-CA-243385 et al.; Paramount Pictures Corp., 31-CA-248665 et al. (Case Closing Email)

These cases were submitted to Advice on whether the Employers unlawfully failed to respond to the Union's information requests about package fees paid by the Employers to talent agencies who represent the Union's member-writers. We agree with the Region that the cases should be dismissed, absent withdrawal.

Briefly, the Union represents writers who produce materials for various television and movie studios. The Union has a collective-bargaining agreement with a number of studio-employers, which includes a provision, Article 9, setting minimum payment terms the Employers must meet, but grants Employers and writers the ability to bargain directly for overscale terms—i.e., pay or other remuneration above the minimum set by the contract. Writers typically hire talent agents to represent them in these overscale negotiations with Employers. Historically, talent agents were paid for their services to their writer-clients by charging a commission based on the amount the Employers paid to the writer. More recently, talent agencies have been abandoning the commission model in favor of negotiating “packaging fees” with studios. Under this model, the talent agencies put together a “package” of talent for a particular production such as directors, writers, and actors, and then negotiate a package fee with the Employer that is often tied to, among others, the profitability of the employer's project. The Union is concerned that these package fees between the talent agencies and the Employers are a conflict of interest for the talent agencies representing the Union's members, since it appears the talent agencies now negotiate for the best and most profitable overall package rather than the best wage rate for the writer.

A collective-bargaining representative is entitled to information relevant and necessary to carrying out its statutory duties and responsibilities, including negotiating over mandatory bargaining subjects and policing a collective-bargaining agreement. *See Detroit Edison Co. v. NLRB*, 440 U.S. 301, 303 (1979) (citing *NLRB v. Acme Indus. Co.*, 385 U.S. 432, 435-36 (1967), and *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149, 152 (1956)). Conversely, information requested outside the context of the collective-bargaining relationship or contract administration for grievance adjustment is not presumptively relevant. *See Southern California Gas Co.*, 342 NLRB 613, 615 (2004) (“the issue of relevance, whether presumptive or not, is whether information is relevant to the collective-bargaining relationship.”); *Ethicon, A Johnson & Johnson Co.*, 360 NLRB 827, 833 (2014) (union not entitled to information requested because no ongoing negotiations when union requested). In seeking presumptively relevant information, a union is not required to demonstrate its precise relevance unless the employer rebuts that presumption. *Fleming Cos.*, 332 NLRB 1086, 1087 (2000) (citing *Mathews Readymix*, 324 NLRB 1005, 1007 (1997), *enfd. in relevant part*, 165 F.3d 74 (D.C. Cir. 1999)).


Here, at the time it was requested, the information sought by the Union did not relate to an actual or planned grievance or impending bargaining over employees' terms and conditions of employment, and there is no suggestion that the Employers had violated Article 9 of the parties' contract by paying writers less than the contractual minimum. The information sought was therefore not presumptively relevant at the time it was requested, and the Union failed to establish the information's relevance after it was questioned by the Employers.

We note that the parties' contract expires in May 2020 and the Union has begun to formulate contract proposals. To the extent the Union needs information related to upcoming bargaining, the Union should renew its information request and seek information it deems relevant. *Cf. Ethicon, A Johnson & Johnson Co.*, 360 NLRB at 833 (no ongoing negotiations when union requested information). If the Employers dispute the relevance of any requested information, the parties

should engage in an interactive process to attempt to resolve the dispute before filing a new charge. *First Transit, Inc.*, 09-CA-219680 Advice Memo dated October 19, 2018, at 5–7.

This email closes these cases in Advice as of today. Please feel free to contact us with questions or concerns.

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Chad Wallace (he/him)  
Attorney  
Division of Advice  
National Labor Relations Board  
1015 Half St. SE  
Washington, DC 20570  


# **EXHIBIT J**



**The Walt Disney Company  
and Associated Companies  
Insider Trading Compliance Program**

It is the policy of The Walt Disney Company to require strict compliance by all directors, officers and employees of the Company and its subsidiaries with the requirements of federal and other securities laws. The Company's overall policy in this area, applicable to all employees, is set forth in the Company's "Standards of Business Conduct."

In order to further strengthen the Company's efforts to promote understanding of and compliance with securities laws, the Company has adopted this "Insider Trading Compliance Program" (the "Program"). The Program is applicable to you and to certain others who normally have access to material non-public information regarding the Company and its subsidiaries.

**It is extremely important, for the protection of the Company and for your own protection that you read, understand and adhere strictly to the Program. We are asking that you confirm your understanding and intention to comply with the Program by e-mail to the Company's Insider Trading Compliance Officer or his designee.**

**I. The Company's Insider Trading Policy**

Rule 10b-5 under the Securities Exchange Act of 1934 (the "Exchange Act"), prohibits every director, officer and employee of the Company and its subsidiaries who is aware of *material, nonpublic* information regarding the Company and its subsidiaries, as well as certain other public companies as described below, from trading, and from advising ("tipping") others to trade, in the Company's securities or securities of such other companies.<sup>1</sup>

- "*Material*" information is information, both positive and negative, that a reasonable investor would be likely to consider important in making an investment decision. It is important to remember that materiality will be judged with the benefit of hindsight. . Information that is likely to be deemed "material" includes earnings results or expectations for the quarter or the year; financial forecasts; major potential new investments, projects, acquisitions or dispositions; major management changes; and significant litigation.
- "*Nonpublic*" information is information that has not been broadly distributed to the public. For "nonpublic" information to become public, it must not only have been released in a way to achieve broad distribution (e.g., a press release or filing with the Securities and Exchange Commission), but also sufficient time must have passed to ensure that the information has become generally available in the market.

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<sup>1</sup> While Rule 10b-5 has not been interpreted to prohibit all charitable contributions or other gifts of securities or pledges or loans of securities, such transfers while aware of material, non-public information may be considered unlawful in some circumstances. This policy prohibits all pledges (see Section III.3, below), and you should consult with counsel before making any gift or loan of Disney securities while you may be aware of material, non-public information.

- *Information about Other Companies.* The prohibition on insider trading also applies to situations in which you are aware of material, nonpublic information about other companies that you may have acquired in the course of performing your responsibilities for the Company or its subsidiaries, including information about related companies (e.g., Euro Disney S.C.A.), vendors, suppliers, customers, distributors, licensees, competitors or joint venture partners. You may not trade in the securities of any such company until the material information in question has become public or is no longer material.
- *Securities Subject to the Insider Trading Policy.* Except as provided elsewhere in this policy, the Company's insider trading policy applies to all securities of The Walt Disney Company and its affiliated companies, including the Company's common stock (traded on the New York Stock Exchange under the ticker symbol "DIS"); notes and debentures; as well as derivative securities based on Disney securities (such as puts, calls and options). It does not apply to transactions in open-end mutual funds or exchange-traded closed end funds.
- *Certain Exceptions.*
  - The *exercise* of stock options (but *not* the concurrent or subsequent sale of shares acquired upon exercise) under the Company's stock option plans and the regular purchase of shares or share units under the Company's various 401(k) plans, The Walt Disney Company Investment Plan or The Walt Disney Company Employee Stock Purchase Program (but not new elections or changes to elections with respect to these plans) are generally exempt from the insider trading prohibition because (in the case of stock options) the stock option exercise is a transaction with the Company and (in the case of other plans) the purchase of shares is pursuant to a predetermined election. However, periodic discretionary purchases or changes in election with respect to the purchase of Company stock under any of the plans referred to above are not exempt. In addition, the *sale* of any such shares, *including* shares acquired upon exercise of stock options (including a cashless exercise), is *not* exempt.

SEC rules permit transactions while aware of material, non-public information if the transactions are pursuant to a predetermined plan that meets certain requirements set out in SEC Rule 10b5-1. Transactions pursuant to a plan that complies with Rule 10b5-1 are permitted by this policy if the plan is entered into while the trading window is open and you have submitted the terms of the plan to the Insider Trading Compliance Officer or someone delegated by him or her before the plan goes into effect and you have not been advised by the Compliance Officer that you may not make transactions pursuant to the plan.

## **II. Individuals and Entities Subject to the Insider Trading Compliance Program**

The persons and entities subject to the Program fall into one of the following categories (the "Covered Individuals"):

- ***Preclearance Individuals.*** All directors and executive officers (“Section 16 Individuals”) who are subject to the reporting and liability provisions of Section 16 of the Exchange Act and the rules and regulations thereunder (which may continue to apply for a period of time even after an individual ceases to hold the position that made him or her a Section 16 Individual), and other designated employees of the Company whom the Company believes have, or are likely to have access to non-public material information outside the blackout periods described below. Preclearance Individuals are notified of their status as such by the Insider Trading Compliance Officer.
- ***Insider Employees.*** Other officers and employees of the Company and its subsidiaries whom the Company believes have, or are likely to have, in the normal course of their duties, access to material, nonpublic information regarding the Company’s earnings. The employees included in this category will be identified, and may be changed from time to time, by the Company’s Insider Trading Compliance Officer or his or her delegee, based on information provided by other members of the Company’s senior management.
- ***Temporary Insiders.*** Under special circumstances, individuals who do not ordinarily have access to material, nonpublic information may become subject to the Program for a limited period of time – for example, as the result of involvement in a material but undisclosed transaction or other major project.
- ***Immediate Family Members.*** Members of the immediate family sharing the household of Preclearance Individuals, Insider Employees and Temporary Insiders are also subject to the Program. Immediate family members include a person’s spouse, domestic partner, parents, children, grandchildren, siblings and parents-in-law, children-in-law and siblings-in-law. It is the director’s or employee’s responsibility to ensure that the actions of such family members are in compliance with the Program’s policies and procedures.
- ***Controlled Entities.*** All corporations, partnerships, limited liability companies, trusts and other entities directly or indirectly controlled by a Preclearance Individual, an Insider Employee, a Temporary Insider or an Immediate Family Member of any such person are subject to the Program. It is the director’s or employee’s responsibility to ensure that the actions of such entities are in compliance with the Program’s policies and procedures.

Employees who are not subject to the Program at any given time are nevertheless subject to the general prohibition on trading while aware of, or otherwise disclosing, material, nonpublic information.

### **III. The Insider Trading Compliance Program**

#### ***1. Blackout Periods.***

**Covered Individuals may not trade any Company securities during “blackout periods” extending around the end of each fiscal quarter. These blackout periods begin two weeks prior to the end of each fiscal quarter and end upon the completion of one full business day after the Company releases information to the public about the prior quarter’s financial results. These periods run approximately as follows:**

Mid March – early May  
Mid June – early August  
Mid September – mid November  
Mid December – early February

The Company may also impose a blackout on trading at other times because of certain developments known to the Company but not yet disclosed to the general public.

For purposes of this policy, “trading” in Company securities includes:

- purchasing or selling securities in private transactions or in the open market, including *discretionary* purchases or sales of Company common stock under The Walt Disney Company Investment Plan or the Employee Stock Purchase Program and the sale of shares acquired upon exercise of stock options (including sales to cover the exercise price of options associated with a cashless exercise of those options); and
- changing elections with respect to Company common stock in the Company’s various 401(k) plans or the Employee Stock Purchase Program.

Exceptions to the blackout period policy may be made only with the written approval of the Company’s Insider Trading Compliance Officer, in consultation with other members of the Company’s senior management.

Even if a blackout period has ended, you may not trade while you are aware of material, nonpublic information.

#### ***2. Mandatory Preclearance of Certain Transactions.***

**All transactions in Company securities by a Preclearance Individual must be precleared by the Company’s Insider Trading Compliance Officer (or his or her designated alternate). For purposes of this preclearance requirement, the term “transactions in Company securities” includes “trading” in Company securities as defined above, as well as loans, gifts or other transfers of Company securities.**

**Preclearance is also required for transactions by a Preclearance Individual in securities of other public companies that have significant business relationships with the Company or any of its subsidiaries, whenever the relationship is such that it is reasonably likely that the Company may be aware of material, nonpublic information about such other company (see “*Information about Other Companies*” in Part I above).**

After receiving clearance to engage in a transaction, a Preclearance Individual should either complete the transaction within 72 hours or make a new preclearance request. However, under no circumstances may a Preclearance Individual effect a transaction while aware of material, nonpublic information even if the transaction has been pre-cleared. If preclearance is denied, the denial of the preclearance itself should be treated confidentially, and should not be disclosed, inside or outside of the Company, where there is any risk that the recipient of the information may trade in Company securities or disclose this information to someone else who may trade.

### **3. *Short Sales; Hedging Transactions; Pledging.***

No Covered Individual may sell Company securities that he or she does not own at the time of the sale (a “short sale”). No Covered Individual may engage in any transactions, whether with derivatives of Company securities (including any puts, calls, options, forwards, short sales or other derivative transactions) or otherwise (including any index-based or synthetic transactions), designed to hedge, or having the effect of hedging, the economic risk of ownership of the Company's securities. No Covered Individual may pledge any Company securities as collateral for any indebtedness, including through a margin account or borrowing from a 401(k) plan if the Covered Individual holds shares of Company stock in the plan.

### **4. *Reports.***

**In addition to required preclearance of transactions, Section 16 Individuals are required to file reports of transactions in Disney securities with the Securities and Exchange Commission, including reports on Form 144 (which must be filed prior to or concurrently with the execution of certain transactions) and Form 4 (which must be filed within two business days after certain transactions are completed). To make sure these reporting requirements are met in a timely manner, all Section 16 Individuals are required to immediately (i.e., within the same business day as the transaction) report to the Company’s Insider Trading Compliance Officer or his or her designee *any* transaction in Company securities by such person, by any immediate family member sharing the same household or by any trust in which he or she has a beneficial interest and any trust or other entity over which he or she has voting or investment power. The report should include the date of the transaction, quantity, price and broker through which the transaction was or is to be effected. The obligation to make this report is in addition to the obligation to obtain preclearance for the transaction.**

### **Individual Responsibility**

Each Covered Individual has the individual responsibility to comply with the Program and to refrain from trading while aware of material nonpublic information. Appropriate judgment should be exercised in connection with any securities transaction. Even if you are not required to preclear, if you have any questions at all relating to a proposed transaction, you are urged to contact the Insider Trading Compliance Officer.

#### **IV. Appointment of Compliance Officer**

In furtherance of the purposes of the Program, the Company has appointed Alan Braverman, Senior Executive Vice President and General Counsel, as the Company's Insider Trading Compliance Officer. Mr. Braverman's telephone number is (818) 560-7896.

The Insider Trading Compliance Officer is responsible for determining, in consultation with other members of the senior management of the Company, the individuals subject to the Program. In addition, the Insider Trading Compliance Officer or his or her designee is responsible for pre-clearing securities transactions when required pursuant to the terms of the Program and for overall administration of the Program.

Working with the Insider Trading Compliance Officer, the Company's Corporate Legal Department is available to provide assistance to Covered Individuals in understanding the applicability of the insider trading laws and the Program to particular individuals, transactions or circumstances. Questions and requests for assistance may be directed to Alan Braverman, Senior Executive Vice President, General Counsel and Secretary, at (818) 560-7896, or Jolene Negre, Associate General Counsel and Assistant Secretary at (818) 560-6728.

#### **V. Penalties**

In 1988, Congress passed the Insider Trading and Securities Fraud Enforcement Act of 1988 ("ITSFEA"), providing for increased penalties for persons engaged in insider trading. The penalties were increased further in the Sarbanes-Oxley Act of 2002. In addition, civil actions may be brought by private plaintiffs or the SEC. A person may be subject to some or all of the penalties below even if he or she does not personally benefit from the violation (e.g., if the violation only involved passing the information to someone else, called a "tippee"). Some of the possible penalties for individuals who trade while aware of material, nonpublic information include:

- jail sentences of up to 20 years;
- disgorgement of profits;
- fines for the person who committed the violation of up to \$5,000,000 or three times the profit gained or loss avoided, whether or not the person actually benefited; and
- fines for the employer or other controlling person, such as a supervisor, of up to the greater of \$1,000,000 or three times the amount of the profit gained or loss avoided.

In addition, a violation of the Program can be expected to result in serious sanctions by the Company, which may include dismissal of the person involved.

## **VI. Questions**

Employees at all times should avoid even the appearance of impropriety with respect to trading in Company securities or the securities of any of the companies with which the Company or its subsidiaries does business. The federal securities laws are very complicated, and the information set forth above is just a summary of the laws that may be applicable to you. When you have any question as to a potential application of insider trading laws or any other restrictions on insider trading, please consult the Company's Insider Trading Compliance Officer or the Corporate Legal Department.

\* \* \* \* \*



MITCHELL SILBERBERG & KNUPP LLP  
A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

Mark A. Wasserman  
A Professional Corporation  
(310) 312-3174 Phone  
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May 26, 2021

**VIA E-FILE AND EMAIL ([marissa.dagdagan@nlrb.gov](mailto:marissa.dagdagan@nlrb.gov))**

Marissa Dagdagan, Esq.  
Field Attorney  
United States Government  
National Labor Relations Board, Region 31  
11500 W. Olympic Blvd., Suite 600  
Los Angeles, CA 90064-1753

**Re: Charge 31-CA-273063 (Walt Disney Pictures, Twentieth Century Fox Film Corp. and Relentless Productions, LLC)**

Dear Ms. Dagdagan:

We write in connection with the above-referenced matter and in response to your follow-up inquiry into why Respondents declined to produce total domestic subscriber numbers for Disney+, pursuant to a Writers Guild of America, West's ("Guild's") proposed confidentiality agreement. The reason is easily stated: the proposed Guild confidentiality agreement does not adequately safeguard this highly sensitive and proprietary data. The significant risk of harm from unauthorized disclosure, weighed against the negligible relevance of the requested data to the WGA's statutory responsibilities, shows conclusively that the data need not be disclosed. *Detroit Edison v. NLRB*, 440 U.S. 301, 318-19 (1979).

As evident from the many news articles published in the last few weeks, even the authorized public disclosure of worldwide subscriber information has a significant impact on the Walt Disney Company ("Company") share price; and this, in turn, similarly affects the Company's overall value and general financial position, as well as the results the Company is able to deliver to its investors and shareholders. *See, e.g.*, Disney Adds Fewer Streaming Subscribers Than Hoped; Revenue Falls Short, Wall Street Journal, May 13, 2021, attached as Exhibit K. Specifically, the most recent public disclosure of lower-than-expected total, worldwide, subscriber numbers for the Disney+ platform resulted in an immediate 4% drop in the Company's share price (*id.*), which equates to more than ten billion dollars in decreased market capitalization.

While Disney+ regularly discloses its *worldwide* subscriber data to the public, Disney+ has never publicly disclosed the exact number of its *domestic* subscriber data, and keeps that data subset highly confidential. Turning over this highly confidential, non-public information to the Guild under a standard Guild confidentiality agreement would not provide anywhere near sufficient protection for the information compared to the immense potential harm that could result from its unauthorized disclosure. If the Guild or any of its attorneys, researchers, secretaries or



administrative staff, even inadvertently, communicated or otherwise disclosed the subscriber numbers at issue, the harm to the Company could be highly significant. Those losses could not possibly be recouped under any mechanism included in a confidentiality agreement. Indeed, the confidentiality agreement proposed by the Guild contained no damages provision at all. Furthermore, as explained in the Respondents' position statement, disclosure of Disney+ subscriber numbers for a specific region, such as the U.S. and Canada, would reveal previously secret details about the platform's growth status and the Company's growth strategy, potentially undercutting its competitive advantage in that region. A confidentiality agreement would not offer any adequate protection or recourse for such losses, which would be highly difficult to quantify and would amount in the millions of dollars if they could; and the Guild could not make up for these types of losses in the event of an inadvertent breach.<sup>1</sup>

Furthermore, as also outlined in Respondents' position statement, the Guild's contentions that the data are necessary for purposes of formulating bargaining proposals fails as a matter of law because there are no impending negotiations and, in fact, the Guild submitted its request for this data after negotiations closed. *See* Respondents' Position Statement dated May 12, 2021, pp. 6-7, Exhibit I. And if the Guild wishes to have the data for purposes of enforcing the parties' collective bargaining agreement, there is no difference between the Guild's ability to do that with what the Respondents proposed (a mutually agreed-upon auditor to verify the accuracy of the Respondents' representations as to the appropriate subscriber tier for Disney+) and what the Guild demands (raw numbers so that the Guild could purportedly do for itself what the agreed-upon auditor would do).

In light of the foregoing, a mutually agreed-upon, independent auditor would be the vastly more secure option for protecting this highly sensitive data. At the same time, the independent auditor option would give the Guild everything it could possibly need to enforce the existing collective bargaining agreement. Accordingly, the Respondents' proposal offers by far the more reasonable alternative under the *Detroit Edison* balancing test. *See also Old Line Life Insurance Co.*, 96 NLRB 499, 502-03 (1951) (Section 8(a)(5) does not compel the employer to provide information in the specific form demanded by the union), *aff'd sub nom. Associated Unions v. NLRB*, 200 F.2d 52 (7th Cir. 1952).

At the bare minimum, the Guild should be required to consider the independent auditor alternative and respond to it. To this date, the Guild has not even meaningfully conferred with Respondents about the auditor option or otherwise explained how the auditor option would hamper the Guild.

Should the Region require additional information, please do not hesitate to contact us.

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<sup>1</sup> The Respondents were previously able to enter into a confidentiality agreement with the Guild to cover Hulu subscriber numbers because, as set forth in the position statement, Hulu only operates domestically, its total subscriber numbers are domestic numbers, and the platform makes those numbers public. Therefore, similar losses would not be incurred in the event of improper disclosure of this information by the Guild.



Marissa Dagdagan  
May 26, 2021  
Page 3

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Sincerely,

/s/ Mark A. Wasserman  
Mark A. Wasserman  
A Professional Corporation of  
Mitchell Silberberg & Knupp LLP

13203188.3

## MEDIA &amp; MARKETING

# Disney Adds Fewer Streaming Subscribers Than Hoped; Revenue Falls Short

End of lockdowns and mask mandates is good news for parks segment but presents headwinds for 18 month old streaming service



Disneyland in Southern California has been reopened at reduced capacity since last month.

PHOTO: BING GUAN/BLOOMBERG NEWS

By [Erich Schwartzel](#) and [Allison Prang](#)

Updated May 13, 2021 7:23 pm ET



Listen to this article

6 minutes

LOS ANGELES—The streaming boom that defined Hollywood during Covid-19 is slowing down for now.

Weeks after [Netflix Inc.](#) announced its subscriber sign ups had slowed amid a reopening economy, [Walt Disney Co.](#) [DIS -2.60%](#) ▼ said its flagship streaming service, Disney+, also added fewer users than Wall Street had expected after months of torrential growth.

Disney+ added 8.7 million subscribers in the fiscal second quarter, bringing its quarter-end total to 103.6 million subscribers, compared with 94.9 million on Jan. 2. Analysts polled by FactSet were expecting 109.3 million subscribers after a quarter that saw massive hits on the service from the company's Marvel Studios.

Disney shares fell more than 4% in after-hours trading.

The winners of the Covid-19 economy aren't the same as those who win in the reopening, and this quarter found Disney in a messy middle. The end of lockdowns and mask mandates, while good news for Disney's lucrative parks division and studio releases, presents fresh headwinds for an 18-month-old streaming operation that has lifted shares to record highs and given the company some of its biggest hits in recent years, from Baby Yoda to "WandaVision." More than a year of quarantines and stay at home orders accelerated an industrywide shift toward direct-to-consumer services that made subscriber growth—and not box-office sales—the leading metric of studios' success.

Nowhere was that more pronounced than at Disney, where the streaming service passed the 100-million-subscriber mark in March, cementing its status as the most successful streaming entrant since Netflix defined the field years ago.

That growth had been a lifesaver for Disney shares, which plummeted to their lowest point since 2014 when the pandemic hit in March 2020 but had rebounded to record highs a year later. Shares have been on a slight downward trend since, hovering around \$180.

Netflix shares are down more than 11% since the company disclosed on its earnings call last month that the reopening was leading to a slowdown in sign-ups. "There's a boost in engagement that you get when people are in a lockdown situation," Netflix operations chief Gregory Peters said at an investor event in March.

Disney has taken steps to boost its streaming revenue, increasing subscription costs by \$1 to \$7.99 a month in late March. The company said the price hike didn't result in any significant user cancellations.

The slowdown could present challenges for newer entrants in the streaming ecosystem, such as HBO at AT&T Inc.'s WarnerMedia and ViacomCBS Inc.'s Paramount+, both of which had splashy launches in the middle of stay-at-home orders.

Earlier this month, ViacomCBS said the service added 6 million subscribers in the first quarter, growing to 36 million subscribers globally. ViacomCBS also said its Pluto TV ad-supported streaming service now reaches about 50 million monthly active users, an increase of about 6 million users in the quarter.

Meanwhile, the company's parks, experiences and products business—which includes its storied Disney World and Disneyland resorts—saw a 44% drop in revenue compared with a year earlier. That division reported an operating loss of \$406 million in a quarter that saw parks either closed or open with capacity limits.

Overall, Disney's total revenue fell 13% from the comparable 2020 period to \$15.61 billion. According to FactSet, analysts were expecting \$15.86 billion.

The reopening economy that caused the slowdown in streaming sign ups has enabled other parts of Disney to resume some degree of normalcy. Disneyland Resort in Southern California reopened last month after being closed for 412 days.

Disney Chief Executive Bob Chapek said he expects to see “an immediate increase” in the number of people allowed inside the domestic parks in light of Thursday's announcement from the Centers for Disease Control and Prevention stating that fully vaccinated people can meet indoors and outside without wearing a mask.

“Today's guidance,” he said, “is very big news for us, particularly if anyone has been in Florida in the middle of summer with a mask on.”

The company's studio operations are nearing full production levels on film and TV after months of Covid related delays and shutdowns, Mr. Chapek said, which could boost Disney+ inventories and goose subscriber rates as highly anticipated shows premiere in the coming months.

And two 2021 films, "Free Guy" and "Shang-Chi and the Legend of the Ten Rings," will premiere exclusively in theaters without a Disney+ component, he added. Both films will have an exclusive run in theaters for 45 days, or about half the amount of time afforded movies in the pre pandemic era.

The company has two major releases on the docket for this summer, "Cruella" and "Black Widow," that will be released on the big screen but also offered for home viewing on Disney+ for an additional \$30. On Thursday, Disney announced its July 30 release, "Jungle Cruise," starring Dwayne Johnson and based on a Disneyland theme-park ride, will also be released in theaters and for \$30 at home viewing.

Disney logged \$901 million in net income, or earnings of 49 cents a share. A year earlier, the company's earnings were \$460 million, or 25 cents a share. The company's tax expenses a year ago were higher, which hurt its year-earlier results, and the company also logged \$305 million in net other income for the recent three-month period.

Adjusted earnings were 79 cents a share, while analysts were expecting 26 cents a share,

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—Benjamin Mullin contributed to this article.

Write to Erich Schwartzel at [erich.schwartzel@wsj.com](mailto:erich.schwartzel@wsj.com) and Allison Prang at [allison.prang@wsj.com](mailto:allison.prang@wsj.com)

*Appeared in the May 14, 2021, print edition as 'Disney+ Adds Fewer Users.'*

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
**APPEAL FORM**

To: General Counsel  
Attn: Office of Appeals  
National Labor Relations Board  
1015 Half Street, S.E.  
Washington, D.C. 20570

Date: June 30, 2021

Please be advised that an appeal is hereby taken to the General Counsel of the National Labor Relations Board from the action of the Regional Director in refusing to issue a complaint on the charge in

Walt Disney Pictures, Twentieth Century Fox Film Corp., and Relentless Productions, LLC

Case Name(s).

31-CA-273063

Case No(s). *(If more than one case number, include all case numbers in which appeal is taken.)*



(Signature)



NATIONAL LABOR RELATIONS BOARD

NOTICE OF APPEARANCE

Walt Disney Pictures, Twentieth Century Fox Film Corp., and  
Relentless Productions, LLC

and

Writers Guild of America West, Inc.

CASE 31-CA-273063

☒ REGIONAL DIRECTOR

☐ EXECUTIVE SECRETARY  
NATIONAL LABOR RELATIONS BOARD  
Washington, DC 20570

☒ GENERAL COUNSEL  
NATIONAL LABOR RELATIONS BOARD  
Washington, DC 20570

THE UNDERSIGNED HEREBY ENTERS APPEARANCE AS REPRESENTATIVE OF \_\_\_\_\_  
Writers Guild of America West, Inc.

IN THE ABOVE-CAPTIONED MATTER.

CHECK THE APPROPRIATE BOX(ES) BELOW:

☒ REPRESENTATIVE IS AN ATTORNEY

☒ IF REPRESENTATIVE IS AN ATTORNEY, IN ORDER TO ENSURE THAT THE PARTY MAY RECEIVE COPIES OF CERTAIN DOCUMENTS OR CORRESPONDENCE FROM THE AGENCY IN ADDITION TO THOSE DESCRIBED BELOW, THIS BOX MUST BE CHECKED. IF THIS BOX IS NOT CHECKED, THE PARTY WILL RECEIVE ONLY COPIES OF CERTAIN DOCUMENTS SUCH AS CHARGES, PETITIONS AND FORMAL DOCUMENTS AS DESCRIBED IN SEC. 11842.3 OF THE CASEHANDLING MANUAL.

(REPRESENTATIVE INFORMATION)

NAME: Anthony R. Segall

MAILING ADDRESS: 510 South Marengo Avenue  
Pasadena, CA 91101

E-MAIL ADDRESS: asegall@rsglabor.com

OFFICE TELEPHONE NUMBER: (626) 796-7555

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SIGNATURE: \_\_\_\_\_

(Please sign in ink.)

DATE: 6.30.21

<sup>1</sup> IF CASE IS PENDING IN WASHINGTON AND NOTICE OF APPEARANCE IS SENT TO THE GENERAL COUNSEL OR THE EXECUTIVE SECRETARY, A COPY SHOULD BE SENT TO THE REGIONAL DIRECTOR OF THE REGION IN WHICH THE CASE WAS FILED SO THAT THOSE RECORDS WILL REFLECT THE APPEARANCE.



CERTIFICATE OF SERVICE

The undersigned, hereby certifies that on June 30, 2021, the foregoing **NOTICE OF APPEARANCE** was filed electronically with the National Labor Relations Board at *www.nlr.gov* and duly served upon the following named individuals of record by electronic mail:

Seth Stevelman  
Walt Disney Pictures, Twentieth Century Fox Film Corp.,  
and Relentless Productions, LLC  
500 S. Buena Vista Street  
Burbank, CA 91521-7470  
E-mail: Seth.A.Stevelman@disney.com

Mark A. Wasserman, Attorney at Law  
Mitchell Silberberg & Knupp LLP  
2049 Century Park East, 18th Floor  
Los Angeles, CA 90067  
E-mail: maw@msk.com

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on June 30, 2021, in Los Angeles, California.

/s/ Jerry Cohen  
Jerry Cohen

**ROTHNER, SEGALL & GREENSTONE**

**ATTORNEYS**

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June 30, 2021

Acting General Counsel Peter Ohr  
Attn: Office of Appeals  
National Labor Relations Board  
Room 8820, 1099 14th Street, N.W.  
Washington, DC 20570-0001

Re: Walt Disney Pictures, Twentieth Century Fox Film Corp., and Relentless  
Productions, LLC, Case 31-CA-273063

Dear Mr. Ohr:

This office represents charging party Writers Guild of America, West, Inc. ("WGAW" or "Guild"), for which I serve as General Counsel.

The WGAW hereby appeals the refusal of Region 21 to issue a complaint in the above-captioned matter. On February 19, 2021, WGAW filed a charge ("Charge") against the employers Walt Disney Pictures, Twentieth Century Fox Film Corp., and Relentless Productions, LLC (collectively "Charged Parties" or "Disney") for violating Section 8(a)(1) and (5) of the Act by refusing to furnish the WGAW with information necessary and relevant to the Guild representation duties. The requested information—the number of domestic subscribers to the Disney+ and Hulu streaming platforms as of July 1, 2020—is relevant to the correct calculation of compensation (both initial compensation and residuals) due to writers under the Writers Guild of America Theatrical and Television Basic Agreement ("MBA"), the industrywide collective bargaining agreement to which Disney is bound. The information is also necessary for the Guild to prepare for negotiating future agreements, including the renegotiation of the MBA in 2023.

The Acting Regional Director ("ARD") of Region 31 dismissed the Charge by letter dated June 16, 2021 ("Dismissal"). The Dismissal should be reversed on multiple grounds. First,

the ARD erred in determining that "[t]he information sought by the [WGAW] is not presumptively relevant and the [WGAW] has not established how the information is necessary and relevant to its role as the exclusive collective-bargaining representative of the unit." Dismissal at 1. Second, the ARD incorrectly concluded that the WGAW "did not assert that it has a dispute with how the Charged Parties have calculated the tiers[.]" *Id.* Finally, WGAW's proffered evidence establishes that the requested information is necessary for formulating bargaining proposals for future agreements.

As we show below, the information withheld by Disney is critical for the WGAW to determine whether members of the bargaining unit who received writing credit on programs made for or exhibited on Hulu and Disney+ were properly paid initial compensation and residuals in accordance with the MBA. Without specific subscriber numbers and an understanding of how Disney+ and Hulu define and categorize their domestic subscribers, the WGAW has no means of verifying whether wages were properly paid to the writers it represents. The information the WGAW seeks is therefore presumptively relevant to the WGAW's performance of its statutory duties. Moreover, even if it is not presumptively relevant, under the Board's liberal discovery-type standard for information requests, the ARD should have found that the WGAW made a sufficient showing of the relevance of the requested information.

## **I. FACTUAL BACKGROUND**

### **A. The WGAW**

The WGAW is a labor union representing approximately 10,000 professional writers who write content for television shows, movies, news programs, documentaries, animation, and digital media. Together with its sister union, Writers Guild of America, East, Inc. ("WGAE;" jointly "WGA"), the WGAW is the exclusive collective bargaining representative for writers employed by the production companies that are signatory to the MBA, an industrywide collective bargaining agreement negotiated by the WGA and the Alliance of Motion Picture and Television Producers, Inc. ("AMPTP"). The AMPTP serves as the collective bargaining representative of the major studios and production companies, while the WGA serves as the exclusive representative for writers employed, or who sell or option work, under the MBA.

### **B. The Charged Parties**

The Charged Parties are signatories to the MBA. Each is an employer in interstate commerce engaged in the production of content for television, digital media and theatrical motion pictures. Each has an obligation to bargain with the WGA pursuant to Section 8(a)(5) and 8(d) of the Act.

### **C. The MBA**

Approximately 2,000 television and film production companies are parties to the MBA, which is normally negotiated at three-year intervals. The term of the Current MBA is May 2,

2020 to May 1, 2023. A full copy of the 2017 MBA is attached as Exhibit 1, and a copy of the Memorandum of Agreement for the 2020 MBA ("2020 MOA") is attached as Exhibit 2 to the Declaration of Joshua Wiser, submitted in connection with the Region's investigation. The MBA establishes minimum terms for the work performed by writers for the signatory employers, including the minimum compensation that writers must be paid for such work.

The Sideletter on Literary Material Written for Programs Made for New Media ("Sideletter"), a part of the MBA, sets forth the minimum terms for projects originally written for the Internet, including high budget derivative and original dramatic new media productions ("HBSVOD Programs") made for a subscription video on demand ("SVOD") platforms such as Disney+, Hulu, Netflix or Amazon Prime. *See* pp. 618-53 of 2017 MBA. As discussed more extensively in Section II.A. below, the number of subscribers an SVOD platform has determines the minimum compensation and residuals due to writers of works made for SVOD services. Compensation—both "initial" compensation and deferred compensation commonly known as "residuals"—is, of course, a mandatory subject of bargaining under Section 8(d) of the Act.

#### **D. Subscribers to SVOD Platforms and the Guild's information request**

Pursuant to Paragraph 4.c. of the Sideletter, SVOD platforms with 20 million or more domestic subscribers must pay writers certain minimum rates for writing services (e.g., the writing of teleplays, rewrites and polishes), depending on the length of the program and its budget. Writers who write for programs with higher budgets are afforded higher rates of pay. Additionally, residuals are paid at five different rates based on an SVOD platform's number of subscribers. Without knowing the number of subscribers for a particular SVOD platform, there is no way for the WGAW to know whether a writer is being paid properly under the MBA.

On August 27, 2020, the WGAW served information requests (the "Subscriber Information Requests") on the Charged Parties (among other signatories to the MBA), seeking:

- The number of paid domestic (U.S. and Canada) subscribers to the Disney+ consumer pay service ("Disney+") and Hulu consumer pay service ("Hulu") as of July 1, 2020;
- The number of domestic (U.S. and Canada) subscribers with access to Disney+ and Hulu during a "free trial period" of more than 30 days;
- The number of domestic (U.S. and Canada) subscribers with access to Disney+ and Hulu during a "free trial period" of 30 days or less; and
- The number of paid domestic (U.S. and Canada) subscribers to Disney+ and Hulu acquired through a partnership with a third-party, if any.

### **E. The Sideletter's Subscriber Factor as a Determinant of Compensation**

Paragraph 4.e. of the Sideletter at pp. 639-46 of the 2017 MBA provides that the number of domestic subscribers to an SVOD platform dictates the minimum compensation and the residuals formula for subsequent use on domestic and foreign SVOD platforms as a multiple of various factors, including the "Subscriber Factor" set forth in subparagraph 4.e.(c) at p. 641.<sup>1</sup>

The Subscriber Factor is as follows:

<b>Subscriber Tier</b>	<b>Domestic Subscribers</b>	<b>Subscriber Factor</b>
1	Under 1 million	20%
2	1 million to 5 million	40.0%
3	Over 5 million but fewer than 20 million	65.0%
4	20 million to 45 million	100.0%
5	Over 45 million	150.0%

Paragraph 4.h. of the 2020 MOA at pp. 64-65 also states: "The number of domestic subscribers shall be determined as of July 1st of each year of the Agreement ... ."

### **F. Disney's Response to the Subscriber Information Requests**

On September 23, 2020 Disney responded by email that Hulu was not signatory, and had no legal obligation to respond to our information request. Over the phone, the WGAW explained that for a prior request Relentless Productions, LLC (a signatory company owned by Hulu, and now, post-acquisition, owned by Disney) directed to the WGAW to seek subscriber information from (b) (6), (b) (7)(C)

On October 1, 2020 Disney responded telephonically to the Subscriber Information Requests and explained it believed the information was confidential, that the WGAW was not entitled to the exact number of subscribers, and that telling the WGAW the subscriber tier was sufficient. In contrast, the two other signatory companies that received virtually identical information requests seeking subscriber information supplied the WGAW with the requested information. CBS Television Studios provided the requested information, including specific subscriber numbers, for CBS All Access, and Spectrum Originals Development provided the requested information, including specific subscriber numbers, for Spectrum Originals. The subscriber information provided by CBS and Spectrum is consistent with the past practice with Hulu over the last several years where, prior to it being acquired by Disney, Hulu shared

<sup>1</sup> The 2014 MBA subscriber threshold for determining initial compensation pursuant to Paragraph 4.c.(1) and (2) of the Sideletter was 15 million subscribers.

subscriber information with the WGAW under a confidentially agreement. It is the same quality and type of information the Charged Parties refused to provide the WGAW.

On December 15, 2020, the WGAW sent a second Subscriber Information Request regarding Disney+ and Hulu. *See Exhibits H, I and J to Wiser Aff.*

In January and February 2021, the WGAW conferred with Disney by phone and email to discuss its refusal to provide the requested subscriber information. In denying the WGAW's information request, Disney declared the number of subscribers to be highly confidential. Disney proposed engaging a third-party accounting firm to independently confirm the subscriber *tiers* at issue, but not the *number of subscribers*. The specific tier in question has a span of 25 million, the difference between 20 million to 45 million domestic subscribers. Disney's refusal to provide the requested information meant the WGAW could not determine, among other things, whether Disney manipulated the calculation of domestic subscribers by narrowing the definition of what should be counted in an effort to remain in the lower tier, which would have a direct effect on the compensation due under the MBA.

Indeed, Disney's publicly-disclosed financials at the time indicated Disney+ may have had over 45 million domestic subscribers. The WGAW explained to Disney that the bare disclosure of information regarding tier placement was insufficient for the WGAW to determine if the number of domestic subscribers was calculated correctly, that the Guild, to carry out its statutory duties, needed the actual number of domestic subscribers as of July 1st, as well as the number of subscribers on a free trial (both under and over 30 days) and the number of third-party provided subscribers in order for the WGAW to carry out its statutory duties. In these discussions, the WGAW explained its need for the requested information, noted that Disney was the WGAW's only source of receiving the requested information, and provided assurances regarding confidentiality. The WGAW further explained Disney's offer to provide access to subscriber numbers for Disney+ and Hulu to a third-party accounting firm was unacceptable as it would deprive the WGAW of the specific information that is necessary and relevant to the WGAW's enforcement and bargaining duties. We pointed out, moreover, that Disney's willingness and ability to share this information with a third party demonstrates that it can share it confidentially with the WGAW, which had been the practice with Hulu for several years prior to that point. To date, Disney has not provided the requested subscriber information.

Having reached a dead end in its attempts to reach a negotiated solution with Disney, the Guild filed the instant charge ("Charge") on February 19, 2021. After an investigation, the ARD dismissed the WGAW's Charge on June 16, 2021. The Guild now appeals that dismissal.

## II. ARGUMENT

### A. The Information Requested by the WGAW Goes to the Heart of Enforcing the MBA and is Presumptively Relevant

The Board and the courts have long recognized that an employer has a duty to provide, at the union's request, information relevant in carrying out the union's statutory responsibilities as the exclusive bargaining representative of its members. *George Koch & Sons, Inc.*, 295 NLRB 695, 698 (1989). Whether the requested information is relevant, or potentially relevant, and must be produced is determined under a "liberal discovery-type standard." *Uniontown County Market*, 326 NLRB 1069, 1071 (1998). "[C]ertain types of information pertaining to wages, hours, and working conditions of bargaining unit members are so intrinsic to the core of the employer-employee relationship that the information is considered presumptively relevant." *George Koch & Sons*, 295 NLRB at 698-99; *see also San Diego Newspaper Guild v. NLRB*, 548 F.2d 863, 867 (9th Cir. 1977).

Here, the ARD concluded that the information requested by the WGAW was not presumptively relevant. Not so. The information requested is required under the Sideletter to calculate wages (initial compensation and residuals) for bargaining unit employees. Where the information requested pertains to employees in the bargaining unit, that information is presumptively relevant. *LBT, Inc.*, 339 NLRB 504, 505 (2003). Further, the information requested by the WGAW was necessary and relevant to determining if the Charged Parties correctly calculated the number of domestic subscribers, and did not excluded from that calculation subcategories of subscribers that would have otherwise required payment of residuals under a higher tier level. Residuals are wages. Wage and related information is one of the categories of information that the Board considers to be presumptively relevant. *See In Re Jano Graphics, Inc.*, 339 NLRB 251, 260 (2003) ("[W]age and related information pertaining to employees in the bargaining unit should, upon request, be made available to the bargaining agent without regard to its immediate relationship to the negotiation or administration of the collective-bargaining agreement.") (internal citations and quotations omitted).

### B. The ARD's Dismissal Is at Odds with the Region's Disposition of a Similar Charge in 2020 and Flies in the Face of Established Case Law

In 2020, in a similar case, Region 31 reached the opposite conclusion to its decision here. There, WGAW represented a unit of employees employed by Amazon Studios and was engaged in negotiating a collective bargaining agreement. The WGAW requested the number of domestic subscribers as of July 1, 2019 for Amazon Prime. In Case No. 31-CA-256127, Region 31 found that the information was necessary for and relevant to the WGAW's performance of its duties as the exclusive bargaining representative of the unit and indicated that it would go to complaint on the issue, which prompted Amazon Studios and the WGAW to reach a settlement prior to issuance.

The ARD's about-face here flies in the face of the established case law:

The first question in a disclosure case is one of relevance; information must be divulged only if it is relevant to a legitimate union need. "Relevant" information is related to the union's function as bargaining representative and reasonably necessary to performance of that function. A dichotomy has developed between data bearing directly on mandatory bargaining subjects and other kinds of information. Information in the first category, pertaining to wages, hours or conditions of employment, is presumptively relevant, and must be disclosed unless the employer proves a lack of relevance.

*Press Democrat Pub. Co. v. NLRB*, 629 F.2d 1320, 1324 (9th Cir. 1980) (internal citations omitted). Further, a company commits an unfair labor practice when it refuses "to furnish information relevant to the union's negotiation or administration of a collective bargaining agreement." *NLRB v. Assoc'd Gen. Contractors*, 633 F.2d 766, 770 (9th Cir. 1980), *cert. denied*, 452 U.S. 915 (1981). *See also NLRB v. Acme Industrial Co.*, 385 U.S. 432, 435-38 (1967) (holding information is relevant and necessary to police whether the collective bargaining agreement was breached); *U.S. Postal Service and Nat. Postal Mail Handlers' Union Local 300*, 308 NLRB 358 (1992) (holding information required for investigation of grievance is relevant and necessary under the Act); and *Int'l Bhd. of Firemen & Oilers, Local No. 288 and Diversy Wyandotte Corp., Dekalb*, 302 NLRB 1008 (1991) (holding an employer must make objectively reasonable and sincere efforts to obtain and provide relevant and necessary information).

**C. Even If the Information Requested Were Not Presumptively Relevant, the ARD Erred in Determining that the Guild's Showing of Relevance Was Insufficient**

Even assuming for the sake of argument that the ARD was correct in determining that the requested information was not presumptively relevant, the WGAW met the test of relevance through the evidence it provided. The burden to show the relevance of the requested information is not exceptionally heavy. *National Extrusion and Manufacturing Company*, 357 NLRB No. 8, p. 2 (2011). "Under the applicable test, the Board asks merely whether the information requested was probably or potentially relevant to the Union's duties as bargaining representative." *Peterbilt Motors Company*, 357 NLRB No. 13, p. 3 (2011). "The Union's burden is to show only a 'probability that the desired information was relevant, and that it would be of use to the union in carrying out its statutory duties and responsibilities.'" *KIRO, Inc.*, 317 NLRB 1325, 1328 (1995) (quoting *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 437 (1967)).

The WGAW easily met this standard. The requested information pertains to wages and other terms and conditions of employment of bargaining unit employees. There is, moreover, some complexity in counting subscribers. There is no universal definition of subscriber, and business practices vary from company to company regarding the method of calculation. For example, Amazon gives access to its streaming platform to anyone who purchases Amazon Prime membership. Apple gives a free subscription to its streaming service to any consumer who



buys a new iPhone. In the case of Disney, it is necessary for the Guild to understand how subscribers are being counted, including whether the number includes subscribers under a free trial or acquired through a third-party partnership. None of these things can be determined by Disney's offer to disclose an unelaborated conclusion about tier placement.

The ARD's Dismissal implies the Guild should have been satisfied with Disney's offer to allow verification by a third party. The ARD cites no precedent suggesting that such an accommodation can be imposed as a statutory requirement. Indeed, the precedent suggests otherwise. In *KIRO*, the union sought documents related to an agreement between the employer, a television station, and another television station to produce a program on which bargaining unit members would be employed. *KIRO*, 317 NLRB at 1326. Although the Board did not find these documents to be, on their face, presumptively relevant, it held that the union made a sufficient showing of relevance such that the employer's failure to furnish the requested information was unlawful. *Id.* at 1328-29. The Board reasoned that "[the union] reasonably believed that the documents relating to the agreements [between the two stations] would not only address financial matters but would also discuss substantive details about ... the manner in which unit employees would be used in the production of this show" and therefore the information was relevant to the union's interest in bargaining over the new program.

Finally, ARD erred in concluding that "the Union has not established that the information is necessary for formulating bargaining proposals given the temporal remoteness of bargaining." Dismissal at 1. This cursory conclusion ignores two important facts. First, although the Guild negotiates the MBA at three- year intervals, during the term of each MBA the Guild negotiates numerous freestanding agreements for individual projects. Some of these are for projects with companies that are not otherwise signatory to the MBA. Some are for projects in work areas—e.g., animation—not automatically covered by the MBA. In those negotiations, it is frequently the case the both the Guild and the company involved will make proposals to adapt or modify the terms of the MBA to the project involved, including as to initial compensation or residuals. Thus, for example, if the Guild were negotiating a deal for an animated project made for Disney+, it would be relevant right now to know what subscriber tier Disney+ is in. Thus, it is not the case as the ARD implies that negotiations only happen every three years.

Second, even if the WGAW negotiating efforts were limited to the MBA itself, the information request is appropriate now. The negotiation of an industrywide agreement is a major undertaking. We are now a little more than one year into the term of the 2020 MBA. And while it is likely that the parties will not convene face-to-face negotiations until early 2023, it is not an exaggeration to say that preparation for negotiations has already begun. Industry analysis necessary to conduct negotiations takes place on an ongoing basis. This is particularly true regarding the issue to which the Guild's current information requests pertain: the subscriber levels of the streaming services. The streaming services, including Disney+ and Hulu, are among the most dynamic sectors of the entertainment industry. The subscriber thresholds were adjusted in the last MBA negotiations, and new streaming services have been launched since that time. Preparation for the next MBA negotiations requires constant monitoring of developments in this area.

Finally, we note that the ARD's comment concerning temporal remoteness completely disregards the real-life efficacy of the Board's processes. Disney has refused to provide information critical to an industrywide negotiation that will begin in approximately 18 months. It is not a common occurrence for the General Counsel to seek 10(j) relief in an information request case. If the Guild is to have any hope of securing a meaningful remedy for Disney's unlawful refusal, a ULP complaint must issue now.

### **III. CONCLUSION**

For the foregoing reasons, the WGAW requests that this appeal be sustained and that a complaint issue forthwith in case number 31-CA-273063.

Very truly yours,

/s/

Anthony R. Segall

ARS/

cc:

(b) (6), (b) (7)(C)